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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1936

No. 389

THE KNOX NATIONAL FARM LOAN ASSOCIATION AND THE FEDERAL LAND BANK OF LOUISVILLE, PETITIONERS,

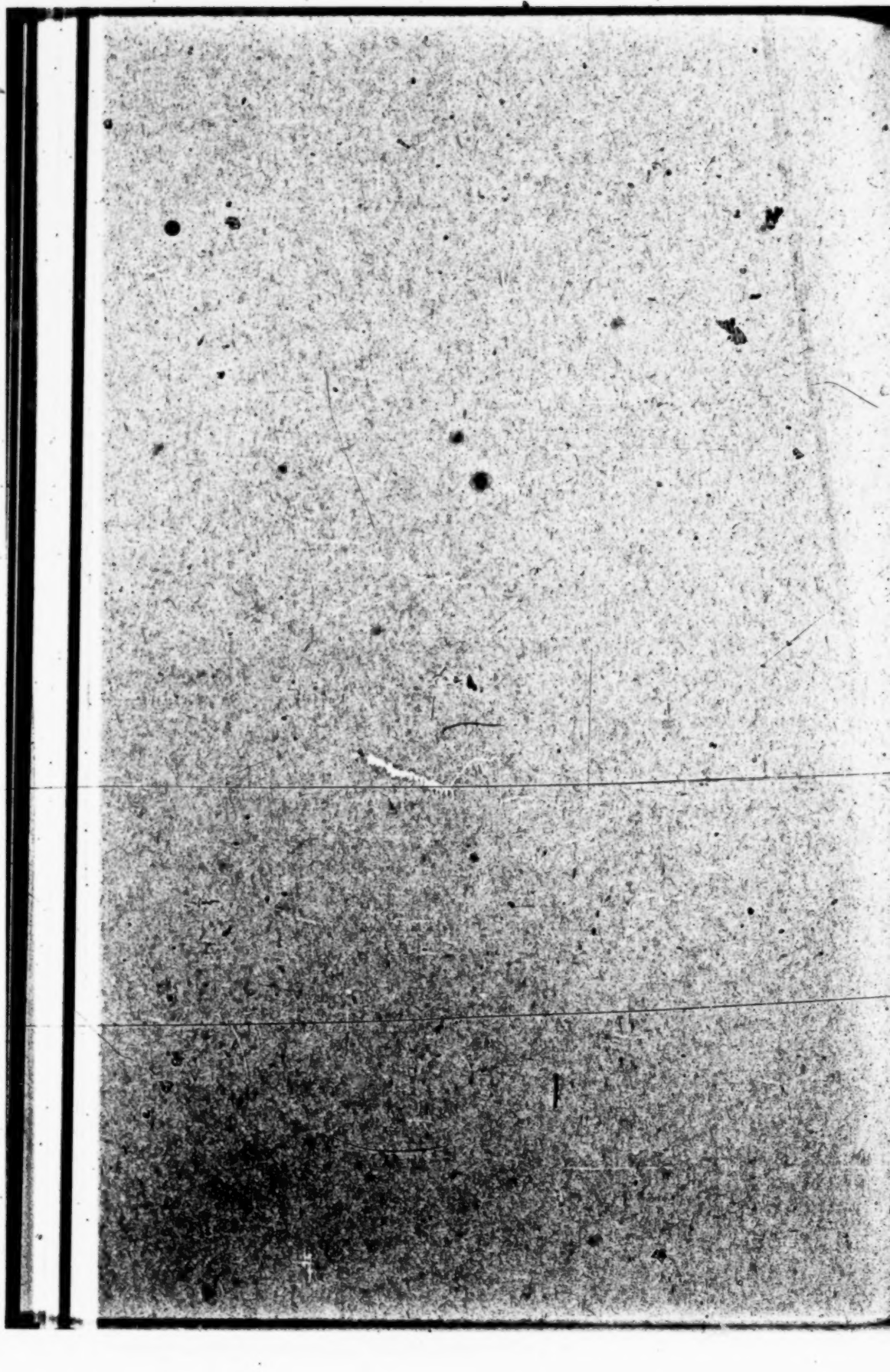
vs.

ARTHUR C. PHILLIPS

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF OHIO

PETITION FOR CERTIORARI FILED SEPTEMBER 23, 1936.

CERTIORARI GRANTED NOVEMBER 9, 1936.



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INDEX.

	Original	Print
Record from Court of Common Pleas of Knox County	3	1
Petition	3	1
Summons and return	10	6
Answer of Knox National Farm Loan Ass'n	11	7
Exhibit "A"—Classification of National Farm Loan Associations	25	18
Recital as to Exhibit "B"	26	18
Answer and Cross-petition of Federal Land Bank of Louisville	27	18
Exhibit "A"—Classification of National Farm Loan Associations (copy) (omitted in printing)	55	
Recital as to Exhibit "B"	56	41
Answer to cross-petition	57	42
Reply to answer of Knox National Farm Loan Ass'n	59	43
Reply to answer of Federal Land Bank of Louisville	62	44
Bill of exceptions	66	46
Caption	66	46
Tender of payment	66	46

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., AUGUST 20, 1936.

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	Original	Print
Record from Court of Common Pleas of Knox County—Continued.		
Bill of exceptions—Continued		
Statement of counsel for plaintiff	66	46
Statement of counsel for defendants	69	48
Colloquy	71	50
Testimony of C. B. Wunderlich	85	61
Motion for new trial	93	68
Amended motions for new trial	93	68
Order settling bill of exceptions	95	70
Exhibit "A"—Receipt of Knox National Farm Loan Association for 53 shares	98	71
Exhibit "B"—Statement of financial condition of Knox National Farm Loan Ass'n	99	72
Exhibit "C"—Certificate of Federal Land Bank of Louisville for 53 shares	104	74
Exhibit "D"—Application for loan	105	74
Exhibit "E"—Statement of amount due on loan	116	87
Exhibit "F"—Indemnity agreement	117	87
Judgment	129	93
Request of Federal Land Bank of Louisville for separate statement of conclusions of fact	132	96
Request of Knox National Farm Assn. for separate statement of conclusions of fact	133	96
Order overruling requests for separate conclusions of fact	134	97
Order appointing receiver	135	97
Motion for new trial	141	101
Amended motion of Federal Land Bank of Louisville for new trial	142	102
Amended motion of Knox National Farm Loan Assn. for new trial	143	103
Order overruling motion and amended motions for new trial	144	104
Proceedings in Court of Appeals of Ohio	145	104
Petition in error	145	104
Waiver of summons in error	148	106
Opinion of court, Lemert, J.	149	107
Judgment	157	114
Notice of appeal	158	114
Order of Supreme Court overruling motion for order directing Court of Appeals to certify its record	159	115
Mandate to Court of Common Pleas	160	116
Præcipe for transcript of record	162	117
Clerk's certificate (omitted in printing)	163	
Order allowing certiorari	164	117

[fols. 1-3]

IN COURT OF COMMON PLEAS OF KNOX COUNTY

No. 15070

ARTHUR C. PHILLIPS, Plaintiff,

vs.

THE KNOX NATIONAL FARM LOAN ASSOCIATION and THE FEDERAL LAND BANK OF LOUISVILLE, Defendants

PETITION—Filed August 14, 1934

Plaintiff says that each of the defendants is a corporation organized and existing under the laws of the United States of America, and under the provisions of law known as the Federal Farm Loan Act; that the principal office of said The Knox National Farm Loan Association is in the city of Mt. Vernon, Knox County, Ohio, and the principal office of the defendant The Federal Land Bank of Louisville is in the city of Louisville, Kentucky.

Plaintiff further says that he owns and is in actual possession of the following real estate, towit:

First Tract: Being Lot No. 24 in the First Quarter, Fifth Township and Fifteenth Range in the United States Military District, according to a sub-divisional survey of said Quarter Township made by S. W. Farquhar, Esq., and duly recorded in Book P, pages 574-5-6 of the Records of Deeds of Knox County, Ohio, said lot estimated to contain 93.90 acres.

Second Tract: Lying and being in the County of Knox and State of Ohio and in the First Quarter of the Fifth Township, Fifteenth Range, United States Military Lands, situated in Knox County, and the state aforesaid, and being taken off the South west portion of Lot 23, commencing at the southwest corner of said lot, and running north to the southwest corner of the lot owned by Williams Jones and wife; thence east to the east line of said lot; thence south to the north west corner of Samuel Van Sickle's lot; thence west to the northwest corner of said lot; thence west along the south line of said lot 23 to the place of beginning, containing 43 acres, be the same more or less.

Third Tract: Lying and being in the county of Knox and State of Ohio, towit: 30 acres of land out of the southeast corner of lot 23 in Rathbone section, so-called; being in the first Quarter, Township 5, Range 15, United States Mili- [fol. 4] tary lands, in Knox County, Ohio, and more particularly described as follows: Beginning at the south east corner of Lot #23, running north on the line between lots 23 and 22, a distance equal to ⅔ the length of said line being 97⅓ poles; thence west such distance as to include the said 30 acres by running a line south to the south boundary of lot 23, which said last line is to be run parallel to the said line between lots 23 and 22.

Plaintiff says that he purchased said real estate from, and received deed conveying fee simple title thereof from, Constant Roberts Child, R. F. Child, Enid M. Roberts and Marshall B. Roberts, dated October 24, 1927, by the terms of which purchase and said deed plaintiff assumed and agreed to pay a certain mortgage upon said land to said defendant, The Federal Land Bank of Louisville, dated May 18, 1925, recorded in Vol. 75, page 606 of the Mortgage Records of said County, given by said grantors to secure the note of said grantors in favor of said defendant, The Federal Land Bank of Louisville, for the principal sum of $5300.00, and bearing interest at the rate of 5½% per annum, and upon which note, at the time of the execution and delivery of said deed to said plaintiff there remained due a balance of $5160.00.

Plaintiff further says that when the grantors, in the deed to him of said land, executed and delivered said mortgage to said defendant, The Federal Land Bank of Louisville, they were required by each of the defendants in this action to purchase fifty-three (53) shares of the capital stock of the defendant, The Knox National Farm Loan Association, and deposit same with said Association as collateral security for the payment of their said loan from said defendant, The Federal Land Bank of Louisville, pursuant to the provisions of the laws of said United States of America, known as the Federal Farm Loan Act aforesaid. Plaintiff further says that upon his purchase of the real estate hereinabove mentioned, consisting of a farm, and the assumption of the mortgage aforesaid, that said 53 shares of the [fol. 5] capital stock of said The Knox National Farm

Loan Association of the par value of $5.00 per share were purchased by, and transferred to, him, for the sum of $265.00; that said The Knox National Farm Loan Association, in consideration of his assumption of said mortgage debt and acceptance of the transfer of said stock, and the deposit of same with said The Knox National Farm Loan Association as collateral security for the payment of the loan aforesaid, agreed that said plaintiff should be entitled to all of the rights and privileges theretofore agreed upon and given to the said original grantors in said deed to this plaintiff in respect to said 53 shares of said capital stock of the defendant, The Knox National Farm Loan Association, and that said rights included an agreement on the part of said Knox National Farm Loan Association that said stock would be accepted at its face value on final payment of said loan.

Plaintiff further says that on the date of the delivery to him of the deed aforesaid, towit, October 24, 1927, said defendant, Knox National Farm Loan Association executed and delivered to him a receipt for said shares of stock and included therein its written statement and agreement that said shares would be accepted at face value on final payment of said loan; and that the loan therein mentioned and referred to was the same hereinabove mentioned evidenced by the note and mortgage to the defendant, The Federal Land Bank of Louisville, assumed by plaintiff in connection with his purchase of the real estate as hereinabove set forth.

Plaintiff further says that from time to time during the period between said October 24, 1927, and March 25, 1933, he made such payments to said defendant, The Federal Land Bank of Louisville in reduction of said loan; that on said last mentioned date the entire balance of principal and interest due thereon amounted to less than an aggregate [fol. 6] amount of $2122.50; that on said last mentioned date he paid into the hands of one E. B. Tucker, as Secretary and Treasurer of said defendant, The Knox National Farm Loan Association, and as Agent for said Knox County, Ohio, of said defendant, The Federal Land Bank of Louisville, the sum of $1857.50, and surrendered at face value of $265.00 his 53 shares aforesaid of the capital stock of said defendant, Knox National Farm Loan Assiciation; and that said payment and said surrender of said stock

fully paid and satisfied said loan, and that he thereupon made demand and request upon said defendants to accept said surrender of said stock at its face value, and for the cancellation and surrender of said note and mortgage held by the defendant, The Federal Land Bank of Louisville, evidencing the loan hereinabove mentioned.

Plaintiff says that said defendants, and each of them, have ever since failed and neglected to accept said surrender of said stock and apply same upon said note at its fave value, in accordance with said demand, and have failed and neglected to cancel and surrender the note and mortgage evidencing said loan, in accordance with said demand, and the law applicable to said transaction, although frequently requested by plaintiff so to do.

Plaintiff further says that said defendant, The Knox National Farm Loan Association deposited the said 53 shares of its capital stock belonging to this plaintiff, as hereinabove mentioned, with said defendant, The Federal Land Bank of Louisville, as collateral security for the payment of the loan hereinabove mentioned and in accordance with the provisions of the laws of the United States of America, known as the Federal Farm Loan Act, and that by the provisions of said laws, it is required that said shares of stock be paid off at par and retired upon full payment of the mortgage loan upon which said shares may [fol. 7] be deposited to secure, in the manner aforesaid.

Plaintiff further says that each of said defendants claim and represent to this plaintiff that said defendant, The Knox National Farm Loan Association, has made such losses in the operation of its business that its capital stock is impaired, and that it is continuing operations with the risk of further losses and further impairment of its capital stock, and that holders of said stock may become subject to assessment thereon for the purpose of paying liabilities heretofore created, and now being created, by said defendant, The Knox National Farm Loan Association. Plaintiff says that if said defendant, The Knox National Farm Loan Association is permitted to continue its said operations that it may result in further losses and further impairment of said capital stock, and may result in an assessment upon stockholders to meet said loss and said impairment up to a possible amount equal to the par value of said stock.

Wherefore, Plaintiff prays that said defendant, The Federal Land Bank of Louisville, be required to pay off and retire said 53 shares of capital stock of Knox National Farm Loan Association, owned by said plaintiff, as hereinabove mentioned, at its par value of $5.00 per share, in acordance with the terms of the agreement hereinabove set forth, and the laws of said United States of America, hereinabove mentioned, known as the Federal Farm Loan Act; that said defendant, The Federal Land Bank of Louisville, be ordered and required to surrender the note and mortgage hereinabove mentioned and described with a proper cancellation duly endorsed upon said mortgage, and that his title to the real estate hereinabove mentioned and described may be quieted against said mortgage and against any claim or claims of said defendants in respect to same; and that a Receiver may be appointed to take charge of the business and property of said defendant, The Knox [fol. 8] National Farm Loan Association, and that said Receiver may be ordered to wind up and liquidate its business, pay its obligations and distribute its net assets to its stockholders according to law. Plaintiff further prays for all other relief that may be proper, either in law or in -quity.

Arthur C. Phillips, Plaintiff.

Duly sworn to by Arthur C. Phillips. Jurat omitted in printing.

Precipe

To the Clerk:

Please issue summons in the foregoing action for the defendants to the Sheriff of Knox County, Ohio, returnable according to law, and endorse thereon:

"Action to cancel mortgage, quiet title, for an order to appoint a Receiver of defendant, The Knox National Farm Loan Association, and to wind up and liquidate its business, and for equitable relief."

Henry C. Devin, Attorney for Plaintiff.

[fol. 9] Waiver

The undersigned, defendants in above entitled action, hereby waives the issuance and service of summons upon

us in said action, and voluntarily enter our presence therein.

The Federal Land Bank of Louisville, by —— ——.
Its Attorney.

[fol. 10] In Court of Common Pleas of Knox County

Summons

Gen'l Code, Secs. 11281, 11883

Common Pleas Court

The State of Ohio, Knox County, to the Sheriff of said County:

You are hereby commanded to notify The Knox National Farm Loan Association and The Federal Land Bank of Louisville, that they have been sued by Arthur C. Phillips in the Court of Common Pleas of Knox County, and must answer by the 15th day of Sept. A. D. 1934, or the petition of said plaintiff will be taken as true, and judgment rendered accordingly.

Said Sheriff will make due return of this summons on the 27th day of August, 1934.

Witness my hand and the seal of said Court, this 15th day of August, 1934.

Chas. W. Sheedy, Clerk, by Mary Brock, Deputy.
(Seal.)

Sheriff's Return

The State of Ohio,
Knox County:

Received this Writ Aug. 15th, 1934 at 2 o'clock P. M., and on August 23rd., 1934, I served the within named The Knox National Farm Loan Assn., by personally handing to Vincent Welker, as President of said Association, a true copy thereof with all the endorsements thereon.

After a careful and diligent search, the within named, The Federal Land Bank of Louisville, its agent or officers could not be found in my county.

F. D. Mason, Sheriff.

[fol. 11] IN COURT OF COMMON PLEAS OF KNOX COUNTY

[Title omitted]

ANSWER OF THE KNOX NATIONAL FARM LOAN ASSOCIATION—
Filed October 16, 1934

Comes now the defendant, The Knox National Farm Loan Association, hereinafter referred to as the Association, and for its separate answer to the plaintiff's petition alleges and shows to the Court:

That this defendant denies each and every allegation, matter and thing in said petition contained, except as hereinafter specifically admitted, qualified or explained.

That the defendant, The Knox National Farm Loan Association, is a body corporate organized and existing under and by virtue of the Act of Congress approved July 17, 1916, known as the Federal Farm Loan Act, and acts amendatory thereof (12 U. S. C. Chapter 7); that said Association is a co-operative, membership corporation, organized under said Act for the purpose of enabling its members to obtain loans on the security of qualified farm mortgaged indorsed by such Association, from The Federal Land Bank of Louisville; that the capital stock of said Association is owned entirely by members and that membership therein is confined to farmers borrowing, as aforesaid, through said Association from said Bank.

That the defendant, The Federal Land Bank of Louisville, is a body corporate organized and existing under and by virtue of the Act of Congress approved July 17, 1916, [fol. 12] known and cited as the Federal Farm Loan Act and acts amendatory thereof, chartered, authorized and empowered to do business in the states of Ohio, Indiana, Kentucky and Tennessee, the same constituting and comprising the Fourth Federal Land Bank District, and that said Bank has its principal place of business in the city of Louisville, Kentucky.

That pursuant to the terms of said Federal Farm Loan Act, said Bank is engaged in the business of loaning money to farmers upon the security of qualified first mortgages on farm lands situated in the states of its district; that said loans are made almost entirely through and to members of separate and distinct corporations known as, and referred to in said Act as National Farm Loan Associations,

including defendant Association; and that under the provisions of said Act, each such association is required upon obtaining a loan for one of its members to subscribe and pay for stock in said Bank in an amount equal to 5% of such loan and to deposit such stock with said Bank as collateral security for such loan.

That on or about November 5, 1924, Marshall B. Roberts, Enid M. Roberts and Constance Roberts Childs being the owners or about to become the owners of the farm premises described in plaintiff's petition; did duly make an application in writing for membership in said Association, and did subscribe to the capital stock of said Association in the amount of $265.00 and at the same time did make application to The Federal Land Bank of Louisville for a loan, through said Association, in the sum of $5,300.00, under the terms, provisions and conditions of the aforesaid Federal Farm Loan Act, and the rules and regulations prescribed by said Federal Farm Loan Board thereunder, such loan to be secured by a qualified first mortgage upon said lands and premises.

That thereafter and on said November 5, 1924, said ap-
[fol. 13] plication for a loan was duly submitted to the Loan Committee of said defendant Association, as provided by said Act for such investigation as it, said Loan Committee, might deem necessary as to the character and solvency of the applicant and the sufficiency of the security offered. Thereupon said Loan Committee did make such investigation and thereafter made its written report of the result thereof and did unanimously approve and recommend said loan.

That thereafter and on the 29th day of November 1924 the Board of Directors of said Association, by a favorable vote of two-thirds of the directorate, did, duly approve and recommend to The Federal Land Bank of Louisville a loan not to exceed $7,950.00 to said Marshall B. Roberts, Enid M. Roberts and Constance Roberts Childs on the land offered in said application and did by a two-thirds vote of the Directors elect Marshall B. Roberts to membership in said Association, subject to all of the attendant rights, privileges and liabilities incident to membership in said Association, as set forth in the Federal Farm Loan Act and in the by-laws of said Association, particularly Section 4 of Article VIII of said by-laws, which reads as follows:

"Shareholders of this association shall be held individually responsible, equally and ratably, and not one for another, for all contracts, debts, and engagements of this association to the extent of the amount of the stock owned by them at the par value thereof, in addition to the amount paid in and represented by their shares."

That the individual responsibility of shareholders for debts, contracts and engagements entered into by said Association after July 16, 1933, is limited to the amount paid in and represented by their shares.

That thereafter said application, together with the aforesaid written report of the Loan Committee of said Association and a record of the action taken by its Board of Direc- [fol. 14] tors thereon, was by said Association duly submitted to The Federal Land Bank of Louisville, whereupon said Bank did refer said application and written report of the Loan Committee to an appraiser appointed by the Federal Farm Loan Board, and said appraiser did investigate and make a written report upon the land offered as security for said loan which report was favorable.

That thereupon and on or about the 18th day of May, 1925, said Bank did after due consideration of said application, said written report of the Loan Committee, said action of said Board of Directors thereon, and the aforesaid written report of the appraiser, approve and authorize a loan to Marshall B. Roberts, Enid M. Roberts and Constance Roberts Childs in the sum of $5,300.00 to be secured by a qualified first mortgage upon the said lands and premises in said application and report of appraisal described.

That at the time the aforesaid application, and the written report of the Loan Committee and the action of the Board of Directors thereon, was submitted to said Bank, the said Association did subscribe for stock in the said Bank in the amount of $265.00, the same being equal to 5% of the amount of the loan granted; that thereafter, upon the making of said loan, said Association paid for said stock and pledged the same with said Bank as collateral security for said loan in accordance with the requirements of said Act.

That thereafter and on or about the 18th day of May, 1925, Marshall B. Roberts, Enid M. Roberts, Constance Roberts Childs and R. F. Childs did execute and deliver to The Federal Land Bank of Louisville their certain promis-

sory note in writing, wherein and whereby they promised and agreed to pay to said Bank at its office in the city of Louisville and state of Kentucky, the sum of $5,300.00 with interest at the rate of 5½% per annum payable in sixty-[fol. 15] eight semi-annual payments of $172.25 payable on the 1st day of January and July in each year and a final payment of $171.77 payable on the first day of January, 1960.

That at the same time and bearing even date therewith and as a part of the same transaction said Marshall B. Roberts, Enid M. Roberts, Constance Roberts Childs and R. F. Childs did execute and deliver to said Bank a qualified first mortgage upon the lands and premises described in plaintiff's petition and hereafter described as follows:

Situated in Knox County, and State of Ohio.

First Tract: Being Lot number 24 in the first quarter, fifth township and fifteenth range in the United States Military District, according to a subdivisional survey of said quarter township made by S. W. Farquhar, Esquire, and duly recorded in Book P, pages 574-5-6 of the Records of Deeds of Knox County; said lot estimated to contain 93.90 acres.

Second Tract: Lying and being in the county of Knox and state of Ohio and in the first quarter of the fifth township, fifteenth range United States Military Lands situated in Knox County and state aforesaid and being taken off the southwest portion of Lot 23, commencing at the southwest corner of said lot and running north to the southwest corner of the lot owned by Wm. Jones and wife; thence east to the east line of said lot; thence south to the northeast corner of Samuel Van Sickle's lot; thence west to the northwest corner of said lot; thence south to the southwest corner of said lot, thence west along the south line of said lot twenty-three to the place of beginning, containing 43 acres, be the same more or less.

Third Tract: Lying and being in the county of Knox and state of Ohio, to wit: 30 acres of land out of the southwest corner of Lot 23, in the Rathbone section so called, being in the first quarter of township 5, range 15 United States Military lands in Knox county, Ohio, and more particularly described as follows:

Beginning at the southeast corner of lot 23; running north on the line between lots 23 and 22, a distance equal to 2/3rds the length of said line being 97 1/3 poles; thence west such a distance as to include the said 30 acres by running a line south to the south boundary of lot 23 which said last line is to be run parallel to the said line between Lots 23 and 22.

Said lands lying and being in the county of Knox, state of Ohio and within the territory in which the Bank and said Association were authorized to do business; that said mort-
[fol. 16] gage was thereafter and on the 8th day of June, 1825, at 10:00 o'clock A. M., duly filed for record in the office of the Recorder for Knox County, Ohio, and therein recorded in Column 75, pages 606-607 of the Mortgage Records of said county.

That thereafter, pursuant to the provisions of said Act, the said defendant Association, by its president and secretary-treasurer, endorsed and thereby became liable for the payment of the note and mortgage above mentioned.

That pursuant to the tenth subdivision of Section 12 of said Act (12 U. S. C. 771), said original borrowers, Marshall B. Roberts, Enid M. Roberts, Constance Roberts Childs and R. F. Childs did elect to use a part of their said loan, towit; $265.00, to pay for their stock in defendant Association, for which they had theretofore subscribed as aforesaid; and that the purchase price of said stock was deducted from the gross amount of said loan, prior to disbursement of the proceeds in the manner described in the following paragraph, said deduction being made in accordance with the direction contained in the loan application, which said direction read as follows:

"To pay for stock in National Farm Loan Association (5 per cent. of ammount applied for) ——."

That thereafter, in May, 1925, said Bank after deducting its proper and authorized fees and charges, did transmit to said Association the net proceeds of said loss, evidenced and secured by the indorsed note and mortgage above mentioned; that said net proceeds were transmitted to said Association pursuant to the authorization of said Act, for delivery to said original borrowers and/or for their account; and that said Association, acting by its secretary-

treasurer, did then pay over said net proceeds, less the proper and authorized fees and charges of said Association, to said original borrowers and/or for their account; [fol. 17] and said original borrowers duly received and receipted for the full proceeds of said loan, less deductions made by said Bank, and said Association for proper and lawful fees and charges in connection with the making of said loan.

That thereafter the said Association did issue to and in the name of one of the original borrowers, Marshall B. Roberts, a certificate for 53 shares of stock of said Association of the par value of $265.00 pursuant to original borrowers' said subscription for said stock and in accordance with the terms and conditions of the Federal Farm Loan Act, and said stock was pledged with said Association as collateral security for said loan, pursuant to the requirements of said Act.

That thereafter and on or about the 24th day of October, 1927, the plaintiff herein purchased from the original borrowers the farm premises described in plaintiff's petition being the same premises which secured the Bank's loan to the original borrowers; that as part of the purchase price, and with the consent of said Bank, plaintiff assumed the mortgage debt and stock interest of said original borrowers and each of them and said 53 shares of stock in the Knox National Farm Loan Association originally issued to Marshall B. Roberts, as aforesaid were transferred to plaintiff who was elected to membership in said association and plaintiff thereby assumed all the liabilities of association membership thereunder, in accordance with the provisions of the Federal Farm Loan Act.

That on or about March 25, 1933, the balance due to the Bank on the mortgage debt which plaintiff assumed and agreed to pay was $2,122.46; that on said date plaintiff paid to defendant Association $1,857.46 and surrendered his certificate of stock representing 53 shares in the defendant Association; that defendant Association by its secretary-treasurer forwarded its check in the amount of $1,857.46 [fol. 18] to defendant Bank; that said defendant Bank returned the check with an explanation it was not sufficient to retire the loan; that again the defendant Association forwarded the check to defendant Bank with the request it be applied toward reduction of the loan; that defendant

Bank so applied said sum, and that there remained an unpaid principal balance of $265.00 of said mortgage debt, which said sum with interest thereon remains unpaid by plaintiff.

That pursuant to the powers vested in it by the terms of said Federal Farm Loan Act, and under and by virtue of the charter granted to it by the Federal Farm Loan Board, The Federal Land Bank of Louisville prior to March 25, 1933, had made numerous other loans to the members of the Knox National Farm Loan Association on the secrity of first mortgages on farm lands qualified under the provisions of said Act in the aggregate amount of $288,600.00, and in connection with their respective loans these member borrowers, including plaintiff, had subscribed for and had been issued stock in said association in the aggregate amount of $14,430.00. In turn the Association had, in connection with said loans, subscribed for and purchased stock in The Federal Land Bank of Louisville in the aggregate amount of $14,430.00. In the case of each loan so made the Association did indorse, and thereby become liable for the payment of each of said loans in accordance with the provisions of the Act in such cases made and provided. That pursuant to the provisions of the Federal Farm Loan Act, the aforesaid mortgages, including that of the plaintiff, were by said Federal Land Bank of Louisville pledged with the Registrar of the Fourth Federal Land Bank District as collateral security for an equal amount of Federal Farm Loan Bonds issued by said Bank and sold to investors; that on the date plaintiff tendered his check in reduction of his mortgage debt [fol. 19] the said Bank had issued and had outstanding in the hands of investors such Federal Farm Loan Bonds in the aggregate principal amount of $113,362,220.00.

From time to time prior to March 25, 1933, there had occurred defaults under the terms and conditions of the aforesaid first mortgages taken by said Bank from the members of said Association and pursuant to the terms and provisions of Section 25 of said Act the Association had been notified of said defaults and had been called upon by said Bank to make good each of said defaults either by the payment of the amounts unpaid thereon in cash or by the substitution of an equal amount of Federal Farm Loan Bonds with all unmatured coupons attached. Notwith-

standing its liability as aforesaid, said Association has failed, and still fails, to make good such defaults.

Under the directions and with the approval of the Federal Farm Loan Board (now Farm Credit Administration), and in order to establish a procedure for carrying out the provisions of the Federal Farm Loan Act as relates to stock liability, the Bank, on October 25, 1929, adopted a classification for national farm loan associations, establishing therefor 4 classes, which classification is set out in full on Exhibit "A" attached hereto and made a part hereof, and class 2 established by said classification is defined as follows:

"Class #2. Every association apparently unable to meet its current obligations without a present impairment of its capital, but seemingly in such condition that it can work out of its present difficulties within a reasonable length of time."

That the classification aforesaid has been followed by said Bank from its adoption to the present time; that by reason of the amount of the unsatisfied matured obligations of said Association to the Bank, the Bank, upon due investigation, did, prior to March 25, 1933, place said association in Class 2, under and by virtue of the procedure adopted as aforesaid with respect to the classification of associations.

[fol. 20] That for the purpose of minimizing losses and establishing a practical procedure in connection with the indebtedness of the Association to the Bank, said defendants entered into an agreement on March 21, 1931, a copy of which agreement is attached hereto, marked Exhibit "B", and made a part hereof; in and by said agreement it was provided in substance that if there shall be a default in the terms of any mortgage indorsed by the Association as a result of which it becomes necesary for the Bank to acquire the mortgages premises, the Association shall remain liable for the debt theretofore secured by such mortgage, and that an account shall be set up to which may be credited any monies including the proceeds of retired stock otherwise payable to the Association as an indemnity against any loss which the Bank may suffer in the final disposition of the property, and that if the sales price of said property as disposed of is less than the Bank's invest-

ment the deficiency is charged to the account of the Association; but that the Association shall not be charged with any sum greater than the actual loss sustained by the Bank, notwithstanding any deficiency judgment which may have been taken upon the foreclosure of such mortgage; that a settlement shall be had between the parties at any time that there are no pending foreclosures of such mortgages, no such acquired lands unsold and no other unpaid material liabilities of the Association to the Bank, or upon the institution of any judicial proceedings which might otherwise prejudice the rights of the Bank as a creditor of the Association, and, in any event, on January 1st, 1935, and on January 1st of each year thereafter, and that such settlement shall constitute an account stated between the parties as to all the items included therein; that at all times since that date the Bank and the Association have proceeded in accordance with the terms and provisions of said [fol. 21] agreement, but no settlement has been had because at all times there have been pending foreclosures, acquired lands unsold and unpaid matured liabilities of the Association to the Bank; and that said agreement conforms in all respects to a standard form theretofore approved by the Federal Farm Loan Board for use throughout the Federal Land Bank system by each Federal Land Bank and the national farm loan associations of its district.

The Association states further that under the provisions of the Federal Farm Loan Act, the construction placed thereon by the Federal Farm Board and the Bank, and the procedure adopted by reason thereof as aforesaid, whenever the Association failed to meet its obligation as indorser on said notes and mortgages, the Bank had a right to and was obliged to offset the amount for which the Association was indebted to said Bank against any amounts otherwise payable to the Association by the Bank, including the proceeds of capital stock taken by the Association in the Bank in connection with said loans and retired by the Bank upon payment thereof.

On March 25, 1933, the total amount of the indebtedness of said Association to said Bank for losses established and charged to the indemnity account, under the procedure above described, was $1,999.89; that in addition thereto, there were at that time estimated losses of the Bank in the aggregate amount of $4,900, on account of lands previously

acquired by the Bank upon the foreclosure of mortgages indorsed by the Association, or on account of pending foreclosure proceedings in connection with other defaulted loans for which the Association was liable as indorser, and said Association was further indebted to said Bank, as indorser of delinquent mortgage loans, for the amount of $2,169.62 in delinquent installments under loans not in process of foreclosure; and at said time the total assets of [fol. 22] said Association immediately available for the payment of its obligations aggregated $1,509.27; that in addition to the assets last mentioned, the Association owned capital stock in the Federal Land Bank of Louisville in the amount of $14,430, which said stock was pledged with said Bank as collateral security for outstanding loans made through said Association.

Defendant Association states further that at all times since March 25, 1933, its indebtedness to said Bank for established losses under indorsed mortgages has exceeded its assets immediately available for liquidation thereof, and that its obligations to said Bank as indorser of delinquent mortgage have continued to exceed the assets immediately available for satisfaction thereof.

Defendant Association states that by reason of its inability as aforesaid to discharge currently its outstanding obligations to its credit the Federal Land Bank of Louisville, it was on March 25, 1933, and at all times since has been, unable to pay off its capital stock at par upon retirement thereof, and that no fund exists or has existed since March 25, 1933, from which distribution may lawfully be made to a stockholder of said Association in payment of his stock interests.

Defendant Association further states that the Federal Farm Loan Act does not authorize a suit against it by one of its shareholders for the proceeds of his capital stock in the Association, unless such shareholder shows, in and by his petition, that said Association has funds available from which such shareholder may properly be paid; and that said Act does not require a national farm loan association to retire and pay off stock unless and until the shareholder shall have paid his loan in full, and unless and until said Association shall have made provision for the satisfaction of its obligations to creditors and to other stockholders who have paid their loans in full.

[fol. 23] Defendant Association further says that no ground has been shown in the Petition filed herein for the appointment of a receiver to take over its assets and administer its affairs; that said Federal Farm Loan Act expressly provides for the liquidation of a national farm loan association, through receivership upon the ground of insolvency, and that the provisions of said Act in such regard confer jurisdiction upon the Farm Credit Administration and its Land Bank Commissioner (formerly Federal Farm Loan Board* for the appointment of a receiver on the ground of insolvency, and that such jurisdiction is exclusive and bars the exercise of like jurisdiction by this or any other court upon the initial application of any party in interest.

Defendant Association further says that the appointment of a court receiver would serve no useful purpose in so far as this plaintiff is concerned, for the reason that the indebtedness of said Association to its creditor, The Federal Land Bank of Louisville, exceeds all assets save and except the capital stock owned by said Association in The Federal Land Bank of Louisville as aforesaid, which said stock is pledged with said Bank, pursuant to the requirements of the Federal Farm Loan Act, as collateral security for outstanding loans; and therefore that a court received would, in administering any assets coming into his possession, have no balance remaining for distribution to plaintiff or to any other shareholder of defendant Association, after paying over said assets to the Association's creditor, The Federal Land Bank of Louisville.

Wherefore, this defendant Association prays, that plaintiff's petition be dismissed, and that this answering defendant may go hence with its costs of this action.

The Knox National Farm Loan Association, Roger D. Branigan, Paul J. Fleming, Charles L. Bermont, Counsel for the Knox National Farm Loan Association.

[fol. 24] *Duly sworn to by V. B. Welker. Jurat omitted in printing.*

[fol. 25] EXHIBIT "A" TO ANSWER

Classification of National Farm Loan Associations in the Fourth Federal Land District

Class #1

Associations wholly solvent without delinquencies or deficiencies.

Class #2

Every association apparently unable to meet its current obligations without a present impairment of its capital, but seemingly in such condition that it can work out of its present difficulties within a reasonable length of time.

Class #3

Every association whose present obligations are so great that not only is its capital partially impaired but it appears that it will not be able to work out of its present difficulties within a reasonable length of time.

Class #4

Every association whose unsatisfied obligations exceed the amount of its capital or whose capital is totally impaired.

[fol. 26] RECITAL AS TO EXHIBIT "B"

Copy of Indemnity Agreement which appears in the Bill of Exceptions as Exhibit F.

[fol. 27] IN COURT OF COMMON PLEAS OF KNOX COUNTY

[Title omitted]

ANSWER AND CROSS PETITION OF THE FEDERAL LAND BANK OF LOUISVILLE—Filed October 24, 1934

Comes now the defendant, The Federal Land Bank of Louisville, hereinafter referred to as the Bank, and for its

separate answer to the plaintiff's petition alleges and shows to the Court:

That this defendant denies each and every allegation, matter and thing in said petition contained, except as hereinafter specifically admitted, qualified and explained.

That the defendant, The Federal Land Bank of Louisville, is a body corporate organized and existing under and by virtue of the Act of Congress approved July 17, 1916, known and cited as the Federal Farm Loan Act and acts amendatory thereof, chartered, authorized and empowered to do business in the states of Ohio, Indiana, Kentucky and Tennessee, the same constituting and comprising the Fourth Federal Land Bank District, and that said Bank has its principal place of business in the city of Louisville, Kentucky.

That pursuant to the terms of said Federal Farm Loan Act, said Bank is engaged in the business of loaning money to farmers upon the security of qualified first mortgages on farm lands situated in the states of its district; that said loans are made almost entirely through and to members of separate and distinct corporations known as, and referred to in said Act as National Farm Loan Associations, [fol. 28] including defendant association; and that under the provisions of said Act, each such association is required upon obtaining a loan for one of its members to subscribe and pay for stock in said Bank in an amount equal to 5% of such loan and to deposit such stock with such Bank as collateral security for such loan.

That this Defendant admits that said Knox National Farm Loan Association was during all the times mentioned in said petition, and now is, a corporation organized and existing under and by virtue of the aforesaid Act of Congress known and cited as Federal Farm Loan Act, chartered by the Federal Farm Loan Board and authorized by said Board to do business in Knox County, State of Ohio.

That on or about November 5, 1924, Marshall B. Roberts, Enid M. Roberts and Constance Roberts Childs being the owners or about to become the owners of the farm premises described in plaintiff's petition, did duly make an application in writing for membership in said Association, and did subscribe to the capital stock of said Association in the amount of $265.00 and at the same time did make application to the defendant Bank for a loan, through said

Association, in the sum of $5,300.00, under the terms, provisions and conditions of the aforesaid Federal Farm Loan Act, and the rules and regulations prescribed by said Federal Farm Loan Board thereunder, such loan to be secured by a qualified first mortgage upon said lands and premises.

That thereafter and on said November 5, 1924, said application for a loan was duly submitted to the Loan Committee of said defendant Association, as provided by said Act for such investigation as it, said Loan Committee, might deem necessary as to the character and solvency of the applicant and the sufficiency of the security offered. Thereupon said Loan Committee did make such investigation and thereafter made its written report of the result thereof [fol. 29] and did unanimously approve and recommend said loan.

That thereafter and on the 29th day of November, 1924, the Board of Directors of said Association, by a favorable vote of two-thirds of the directorate, did duly approve and recommend to The Federal Land Bank of Louisville a loan not to exceed $7,950.00 to said Marshall B. Roberts, Enid M. Roberts and Constance Roberts Childs on the land offered in said application and did by a two-thirds vote of the Directors elect Marshall B. Roberts to membership in said Association, subject to all of the attendant rights, privileges and liabilities incident to membership in said Association, as set forth in the Federal Farm Loan Act and in the by-laws of said Association particularly Section 4 of Article VIII of said by-laws, which reads as follows:

"Shareholders of this association shall be held individually responsible, equally and ratably, and not one for another, for all contracts, debts, and engagements of this association to the extent of the amount of the stock owned by them at the par value thereof, in addition to the amount paid in and represented by their shares."

That the individual responsibility of shareholders for debts, contracts and engagements entered into by said association after July 16, 1933, is limited to the amount paid in and represented by their shares.

That thereafter said application, together with the aforesaid written report of the Loan Committee of said Association and a record of the action taken by its Board of Directors thereon, was by said Association duly submitted

to The Federal Land Bank of Louisville, whereupon said Bank did refer said application and written report of the Loan Committee to an appraiser appointed by the Federal Farm Loan Board, and said appraiser did investigate and make a written report upon the land offered as security for said Loan which report was favorable.

[fol. 30] That thereafter and on or about the 16th day of May, 1925, said Bank did after due consideration of said application, said written report of the Loan Committee, said action of said Board of Directors thereon, and the aforesaid written report of the appraiser, approve and authorize a loan to Marshall B. Roberts, Enid M. Roberts and Constance Roberts Childs in the sum of $5,300.00 to be secured by a qualified first mortgage upon the said lands and premises in said application and report of appraisal described.

That at the time the aforesaid application, and the written report of the Loan Committee and the action of the Board of Directors thereon, was submitted to said Bank, the said Association did subscribe for stock in the said Bank in the amount of $265.00, the same being equal to 5% of the amount of the loan granted; that thereafter, upon the making of said loan, said Association paid for said stock and pledged the same with said Bank as collateral security for said loan in accordance with the requirements of said Act.

That thereafter and on or about the 18th day of May, 1925, Marshall B. Roberts, Enid M. Roberts, Constance Roberts Childs and R. F. Childs did execute and deliver to The Federal Land Bank of Louisville their certain promissory note in writing, wherein and whereby they promised and agreed to pay to said Bank at its office in the city of Louisville and state of Kentucky, the sum of $5,300.00 with interest at the rate of 5½% per annum payable in sixty-eight semiannual payments of $172.25 payable on the 1st day of January and July in each year and a final payment of $171.77 payable on the first day of January, 1960.

That at the same time and bearing even date therewith and as a part of the same transaction said Marshall B. Roberts, Enid M. Roberts, Constance Roberts Childs and R. F. Childs did execute and deliver to said defendant [fol. 31] Bank a qualified first mortgage upon the lands and

premises described in plaintiff's petition and hereafter described as follows:

Situated in Knox County and State of Ohio.

First Tract: Being lot number 24 in the first quarter, fifth township, and fifteenth range in the United States Military District, according to a subdivisional survey of said quarter township made by S. W. Farquhar, Esquire, and duly recorded in Book P, pages 574-5-6 of the Records of Deeds of Knox County, said lot estimated to contain 93.90 acres.

Second Tract: Lying and being in the county of Knox and state of Ohio and in the first quarter of the fifth township, fifteenth range United States Military Lands, situated in Knox County and the said aforesaid and being taken off the southwest portion of Lot 23, commencing at the southwest corner of said lot and running north to the southwest corner of the lot owned by Wm. Jones and wife; thence east to the east line of said lot; thence south to the northeast corner of Samuel Van Sickle's lot; thence west to the northwest corner of said lot; thence south to the south-west corner of said lot; thence west along the south line of said lot twenty-three to the place of beginning, containing forty-three acres, be the same more or less.

Third Test: Lying and being in the county of Knox and state of Ohio, towit: 30 acres of land out of the southeast corner of Lot 23, in the Rathbone section so called, being in the first quarter of township 5, range 15, United States Military lands in Knox county, Ohio, and more particularly described as follows:

Beginning at the southeast corner of Lot 23; running north on the line between Lots 23 and 22, a distance equal to ⅔rds the length of said line being 97⅓ poles; thence west such a distance as to include the said 30 acres by running a line south to the south boundary of Lot 23 which said last line is to be run parallel to the said line between Lots 23 and 22.

Said lands lying and being in the county of Knox, state of Ohio, and within the territory in which the defendant Bank and said Association were authorized to do business; the said mortgage was thereafter and on the 8th day of June, 1925, at 10:00 o'clock, A. M., duly filed for record in

the office of the Recorder for Knox County, Ohio, and therein recorded in Volume 75, pages 606-607 of the Mortgage Records of said county.

[fol. 32] That thereafter, pursuant to the provisions of said Act, the said Association, by its president and secretary-treasurer, endorsed and thereby became liable for the payment of the note and mortgage above mentioned.

That pursuant to the tenth subdivision of section 12 of said Act (12 U. S. C. 771), said original borrowers, Marshall B. Roberts, Enid M. Roberts, Constance Roberts Childs and R. F. Childs did elect to use a part of their said loan, towit: $265.00 to pay for their stock in defendant Association, for which they had theretofore subscribed as aforesaid; and that the purchase price of said stock was deducted from the gross amount of said loan, prior to disbursement of the proceeds in the manner described in the following paragraph, said deduction being made in accordance with the direction contained in the loan application, which said direction read as follows:

"To pay for stock in National Farm Loan Association (5 per cent of amount applied for) ——."

That thereafter, in May, 1925, said defendant Bank after deducting its proper and authorized fees and charges, did transmit to said Association the net proceeds of said loan, evidenced and secured by the indorsed note and mortgage above mentioned; that said net proceeds were transmitted to said Association pursuant to the authorization of said Act, for delivery to said original borrowers and/or for their account; and that said Association, acting by its secretary-treasurer, did then pay over said net proceeds, less the proper and authorized fees and charges of said Association, to said original borrowers and/or for their account; and said original borrowers duly received and receipted for the full proceeds of said loan, less deductions made by said Bank, and said Association for proper and lawful fees and charges in connection with the making of said loan.

[fol. 33] That thereafter the said Association did issue to and in the name of one of the original borrowers, Marshall B. Roberts, a certificate for 53 shares of stock of said Association of the par value of $265.00 pursuant to original borrowers' said subscription for said stock and in accord-

ance with the terms and conditions of the Federal Farm Loan Act, and said stock was pledged with said Association as coll-teral security for said loan, pursuant to the requirements of said Act.

That thereafter and on or about the 24th day of October, 1927, the plaintiff herein purchased from the original borrowers the farm premises described in plaintiff's petition being the same premises which secured the defendant Bank's loan to the original borrowers; that as part of the purchase price and with the consent of said Bank, plaintiff assumed the mortgage debt and stock interest of said original borrowers and each of them and said 53 shares of stock in the Knox National Farm Loan Association originally issued to Marshall B. Roberts, as aforesaid were transferred to plaintiff who was elected to membership in said association and plaintiff thereby assumed all the liabilities of association membership thereunder, in accordance with the provisions of the Federal Farm Loan Act.

That on or about March 25, 1933, the balance due to the defendant Bank on the mortgage debt which plaintiff assumed and agreed to pay was $2,122.46; that on said date plaintiff paid to said Association $1,857.46 and surrendered his certificate of stock representing 53 shares in the said Assoc-ation; that said Association by its secretary-treasurer forwarded its check in the amount of $1,857.46 to defendant Bank; that said defendant Bank returned the check with an explanation it was not sufficient to retire the loan; that against the defendant Association forwarded the check to defendant Bank with the request it [fol. 34] be applied toward reduction of the loan; that defendant Bank so applied said sum and there remained an unpaid principal balance of $265.00 of said mortgage debt, which said sum with interest thereon remains unpaid by plaintiff.

That pursuant to the powers vested in it by the terms of said Federal Farm Loan Act, and under and by virtue of the charter granted to it by the Federal Farm Loan Board, the Federal Land Bank of Louisville prior to March 25, 1933, had made numerous other loans to the members of the Knox National Farm Loan Association on the security of first mortgages on farm lands qualified under the provisions of said Act in the aggregate amount of $288,600.00, and in connection with their respective loans these mem-

ber borrowers, including plaintiff, had subscribed for and had been issued stock in said Association in the aggregate amount of $14,430.00. In turn the Association had, in connection with said loans, subscribed for and purchased stock in the defendant Bank in the aggregate amount of $14,430.00. In the case of each loan so made the said Association did indorse, and thereby become liable for the payment of each of said loans in accordance with the provisions of the Act in such cases made and provided. That pursuant to the provisions of the Federal Farm Loan Act, the aforesaid mortgages, including that of the plaintiff, were by said defendant Bank pledged with the Registrar of the Fourth Federal Land Bank District as collateral security for an equal amount of Federal Farm Loan Bonds issued by said Bank and sold to investors; that on the date plaintiff tendered his check in reduction of his mortgage debt the defendant Bank had issued and had outstanding in the hands of investors such Federal Farm Loan Bonds in the aggregate principal amount of $113,362,220.00.

From time to time prior to March 25, 1933, there had occurred defaults under the terms and conditions of the [fol. 35] aforesaid first mortgages taken by said defendant Bank from the members of said Association and pursuant to the terms and provisions of Section 25 of said Act the Association had been notified of said defaults and had been called upon by defendant Bank to make good each of said defaults either by the payment of the amount unpaid thereon in cash or by the substitution of an equal amount of Federal Farm Loan Bonds with all unmatured coupons attached. Notwithstanding its liability as aforesaid, said Association has failed and still fails, to make good such defaults.

Under the directions and with the approval of the Federal Farm Loan Board (now Farm Credit Administration), and in order to establish a procedure for carrying out the provisions of the Federal Farm Loan Act as relates to stock liability, the defendant Bank, on October 25, 1929, adopted a classification for national farm loan associations, establishing therefor 4 classes, which classification is set out in full on Exhibit "A" attached hereto and made a part hereof, and class 2 established by said classification is defined as follows:

"Class #2. Every association apparently unable to meet its current obligations without a present impairment

of its capital, but seemingly in such condition that it can work out of its present difficulties within a reasonable length of time."

That the classification aforesaid has been followed by defendant Bank from its adoption to the present time; that by reason of the amount of the unsatisfied matured obligations of said Association to the defendant Bank, the Bank, upon due investigation, did, prior to March 25, 1933, place said Association in class 2, under and by virtue of the procedure adopted as aforesaid with respect to the classification of associations.

That for the purpose of minimizing losses and establishing a practical procedure in connection with the indebted- [fol. 36] ness of the Association to the defendant Bank, said defendants entered into an agreement on March 21, 1931, a copy of which agreement is attached hereto, marked Exhibit "B" and made a part hereof; in and by said agreement it was provided in substance that if there shall be a default in the terms of any mortgage indorsed by the Association as a result of which it becomes necessary for the defendant Bank to acquire the mortgaged premises, the Association shall remain liable for the debt theretofore secured by such mortgage, and that an account shall be set up to which may be credited any monies including the proceeds of retired stock otherwise payable to the Association as an indemnity against any loss which the defendant Bank may suffer in the final disposition of the property, and that if the sales price of said property as disposed of is less than the defendant Bank's investment the deficiency is charged to the account of the Association; but that the Association shall not be charged with any sum greater than the actual loss sustained by the defendant Bank, notwithstanding any deficiency judgment which may have been taken upon the foreclosure of such mortgage; that a settlement shall be had between the parties at any time that there are no pending foreclosures of such mortgages, no such acquired land unsold and no other unpaid material liabilities of the Association to the defendant Bank, or upon the institution of any judicial proceedings which might otherwise prejudice the rights of the defendant Bank as a creditor of the Association, and, in any event, on January 1st, 1935, and on January 1st of each year thereafter,

and that such settlement shall constitute an account stated between the parties as to all the items included therein; that at all times since that date the defendant Bank and the Association have proceeded in accordance with the terms and provisions of said agreement, but no settlement has been had because at all times there have been pending fore- [fol. 37] closures, acquired lands and unpaid matured liabilities of the Association to the defendant Bank; and that said agreement conforms in all respects to a standard form theretofore approved by the Federal Farm Loan Board for use throughout the Federal Land Bank system by each Federal Land Bank and the national farm loan associations of its district.

The defendant Bank states further that under the provisions of the Federal Farm Loan Act, the construction placed thereon by the Federal Farm Board and the Bank, and the procedure adopted by reason thereof as aforesaid, whenever the Association failed to meet its obligation as indorser on said notes and mortgages, the defendant Bank had a right to and was obliged to offset the amount for which the Association was indebted to said defendant Bank against any amounts otherwise payable to the Association by the Bank, including the proceeds of capital stock taken by the Association in the Bank, in connection with said loans and retired by the defendant Bank upon payment thereof.

On March 25, 1933, the total amount of the indebtedness of said Association to said defendant Bank for losses established and charged to the indemnity account, under the procedure above described, was $1,999.89; that in addition thereto, there were at that time estimated losses of the defendant Bank in the aggregate amount of $4,900 on account of lands previously acquired by the Bank upon the foreclosure of mortgages indorsed by the Association, or on account of pending foreclosure proceedings in connection with other defaulted loans for which the Association was liable as indorser, and said Association was further indebted to said defendant Bank, as indorser of delinquent mortgage loans, for the amount of $2,169.62 in delinquent installments under loans not in process of foreclosure; and at said time, the total assets of said Association immedi- [fol. 38] ately available for the payment of its obligations aggregated $1,509.27; that in addition to the assets last

mentioned, the Association owned capital stock in the Federal Land Bank of Louisville in the amount of $14,430, which said stock was pledged with said defendant Bank as collateral security for outstanding loans made through said association.

Defendant Bank states further that at all times since March 25, 1933, said Association's indebtedness to said defendant Bank for established losses under indorsed mortgages has exceeded said Association's assets immediately available for liquidation thereof, and that said Association's obligations to said defendant Bank as indorser of delinquent mortgages have continued to exceed the assets immediately available for satisfaction thereof.

Defendant Bank states that by reason of said Association's inability as aforesaid to discharge currently said Association's outstanding obligations to its creditor, defendant Bank, it was on March 25, 1933, and at all times since has been unable to pay off said Association's capital stock at par upon retirement thereof, and that no fund exists or has existed since March 25, 1933, from which distribution may lawfully be made to a stockholder of said Association in payment of his stock interests.

Defendant Bank further states that the Federal Farm Loan Act does not authorize a suit against said Association by one of said Association's shareholders for the proceeds of his capital stock in said Association, unless such shareholder shows, in and by his petition, that said Association has funds available from which such shareholder may properly be paid; and that said Act does not require a national farm loan association to retire and pay off stock unless and until the shareholder shall have paid his loan in full, and unless and until said Association shall have made [fol. 39] provisions for the satisfaction of its obligations to creditors and to other stockholders who have paid their loans in full.

Defendant Bank further says that no ground has been shown in the petition filed herein for the appointment of a receiver to take over said Association's assets and administer its affairs; that said Federal Farm Loan Act expressly provides for the liquidation of a national farm loan association, through receivership upon the ground of insolvency, and that the provisions of said Act in such regard confer jurisdiction upon the Farm Credit Administration

and its Land Bank Commissioner (formerly Federal Farm Loan Board) for the appointment of a receiver on the ground of insolvency, and that such jurisdiction is exclusive and bars the exercise of like jurisdiction by this or any other court upon the initial application of any party in interest.

Defendant Bank further says that the appoint- of a court receiver would serve no useful purpose insofar as this plaintiff is concerned, for the reason that the indebtedness of said Association to its creditor, The Federal Land Bank of Louisville, exceeds all assets save and except the capital stock owned by said Association in The Federal Land Bank of Louisville as aforesaid, which said stock is pledged with said defendant Bank, pursuant to the requirements of The Federal Farm Loan Act, as collateral security for outstanding loans, and therefore that a court receiver would, in administering any assets coming into his possession, have no balance remaining for distribution to plaintiff or to any other shareholder of said Association, after paying over said assets to said Association's creditor, The Federal Land Bank of Louisville.

Cross-Petition

The defendant Bank is and at all times hereinafter [fol. 40] mentioned was, a corporation organized and e-*sit*-ing under that Act of Congress known as the Federal Farm Loan Act, with power to contract and be contracted with, to sue and be sued and to lend money on first mortgages.

First Cause of Action

On or about May 18, 1926, Marshall B. Roberts, unmarried, Enid M. Roberts, unmarried, Constant J. Roberts Childs and R. F. Childs, her husband, hereinafter collectively called the Borrowers), for value received, signed, executed and delivered to the defendant Bank a certain writing called a promissory note dated May 18, 1925, which was and is in words and figures as follows:

No. 32174. $5300.

First Mortgage Note

Centerburg, Ohio, May 18th, 1925.

For value received we promise to pay to the order of The Federal Land Bank of Louisville at its offices in the city of Louisville, Kentucky, the principal sum of

* * * Fifty-Three Hundred * * * Dollars

with interest from date on the whole amount of said principal sum remaining from time to time unpaid, at the rate of five and one-half per centum per annum, payments to be made on the amortization plan and in accordance with amortization tables promulgated by The Federal Farm Loan Board, said payments to be made in manner and form as follows: A preliminary interest payment to be made on the first day of July, 1925, being 5½ per cent interest from date of this note until said time of payment and thereafter in sixty-eight semi-annual payments of * * * One Hundred Seventy-Two and 25/100 * Dollars each, payable on the first day of January and July in each year, and a final payment of * One Hundred Seventy-One and 77/100 * * * Dollars payable on the first day of January, 1960, and we further promise and agree to pay reasonable attorny's fees in the event there is any default in the payment of this note as provided herein.

This instrument is negotiable and payable at The Federal Land Bank of Louisville at its offices in the city of Louisville, Kentucky.

If any payment, or payments, herein provided for, are not paid when due, such defaulted payment, or payments, shall bear simple interest from the date of such default until paid at the highest rate of interest authorized by law, not exceeding eight per centum per annum.

The drawers and endorsers, and all parties to this instrument, severally waive presentment for payment, protest, notice of protest, notice of non-payment of the instrument, demand and all legal diligence in enforcing collection.

This note is secured by a mortgage of even date herewith, executed by. * * * Marshall B. Roberts, unmarried; Enid M. Roberts, unmarried; Constant J. Roberts Childs and R. F. Childs, her husband * * * to the said [fol. 41] The Federal Land Bank of Louisville, Kentucky, on lands in Knox County, Ohio, which is the first lien on the property therein described. If any default be made in any of the payments provided for in this note, or in case of failure to perform any or either of the terms or conditions of said —, the whole indebtedness secured by this —, together with all interest on same shall, at the option of said The Federal Land Bank of Louisville, its successors, or assigns become due and payable at once without demand

or notice, notice of the exercise of such option being hereby expressly waived.

After five years from the date hereof, on any date when any regular installment becomes due hereunder, the maker or makers of this note shall have the option of making additional payments in the sum authorized by The Federal Farm Loan Act or any amendment thereof, for the reduction of the principal or the payment of the entire principal, and any payment in reduction of principal so made shall be endorsed on this note. Such additional payments shall not reduce the fixed semi-annual payments, provided for herein, but will pay off the loan at an earlier date. Whenever the whole prin-ipal hereof, together with all interest accrued thereon, shall have been fully paid then all provisions herein for installment payments maturing thereafter shall be null and void and this note shall then be fully paid off and satisfied.

Marshall B. Roberts, Enid M. Roberts, Constant J. Roberts-Childs, R. F. Childs.

[fol. 42] By said note the Borrowers, and each of them, agreed and promised to pay to the Bank the principal sum of $5,300.00 with interest at the rate of 5½% per annum upon the amount of the principal sum remaining unpaid from time to time, and to pay the principal sum on the amortization plan, said payments to be made as follows:

A preliminary interest payment of $25.91 on June 9, 1925, and thereafter sixty-eight semi-annual payments of $171.25 each, payable on January 1st, and July 1st, of each year thereafter, beginning with January 1, 1926, and extending to and including July 1, 1959, and a final payment of $171.77 on January 1, 1960.

The Bank is the owner and holder of said note, and at all times herein mentioned was the owner thereof.

The installments due on said note were paid to and including the installment due on January 1, 1933, and a partial payment of $65.84 on April 21, 1933, and on the July 1, 1933, installment.

The installments due on July 1, 1933 and January 1, 1934 have not been paid, nor has any part thereof or any interest thereon been paid, except as hereinabove stated.

The Bank has elected and declared, and hereby elects to and declares, its whole debt evidenced by said note to be immediately due and payable and in default.

There is now due and owing to the Bank from the Borrowers, and each of them, on account of the loan and note heretofore set forth the following sums:

$106.41 Balance of installment due July 1, 1933.
170.93 Installment due January 1, 1934.

with interest on each of the foregoing sums at the rate of 5½ per centum (5½%) per annum from the aforesaid respective due date thereof until paid.

(Here follows one photo, side folio 43)

[fol. 44] Second Cause of Action

The allegations herein before made are made a part hereof by reference as fully as if copied herein.

To more fully secure the payment of the note heretofore set forth, the Borrower on or about May 18, 1925, signed, executed, acknowledged and delivered to the Bank a certain writing called a mortgage which was and is in words and figures as follows, towit:

Ohio

This Mortgage made and entered into, this the 18th day of May, 1925, by and between * * * Marshall B. Roberts, unmarried; Enid M. Roberts, unmarried; Constant J. Roberts Childs and R. F. Childs, her husband * * * of Knox County, Ohio, parties of the first part, and The Federal Land Bank of Louisville, a corporation duly incorporated and existing under the Federal Farm Loan Act, the principal office and post office address of which is Louisville, Kentucky, party of the second part,

Witnesseth: That the said parties of the first part in consideration of Fifty-Three Hundred Dollars to them in hand paid and loaned by the party of the second part, the receipt of which is hereby acknowledged, do by these presents convey and mortgage unto the said party of the second part, its successors and assigns, the following described real estate, with its rents, issues and profits, situated in Knox County and State of Ohio, more particularly described as follows:

First Tract: Being lot number 24 in the first quarter, fifth township, and fifteenth range in the United States

32174

Principal $5,300, Rate 5½% Semi-Annual Installments $172.25

AMORTIZATION TABLE

Year Due	No.	Interest	Principal	Date paid	Balance
1925	1	145.75	26.50	2 7 W	5273.50
1926	2	145.02	27.23	6 3 W	5246.27
1926	3	144.27	27.98	12 7 B	5218.29
1927	4	143.50	28.75	6 3 T	5189.54
1927	5	142.71	29.54	10 22 L	5160.00
1928	6	141.90	30.35	6 22 L	5129.65
1928	7	141.07	31.18	12 27 W	5098.47
1929	8	140.21	32.04	6 28 W	5066.43
1930	9	139.33	32.92	12 27 29	5033.51
1930	10	138.42	33.83	6 19 30L	4999.68
1930	11	137.49	34.76		4964.92
19	12	136.54	35.71		4929.21
19	13	135.55	36.70		4892.51
19	14	134.54	37.71		4854.80
19	15	133.51	38.74		4816.06
19	16	132.44	39.81		4776.25
19	17	131.35	40.90		4735.35
19	18	130.22	42.03		4693.32
19	19	129.07	43.18		4650.14
19	20	127.88	44.37		4606.77
19	21	126.66	45.59		4560.18
19	22	125.40	46.85		4513.33
19	23	124.12	48.13		4465.20
19	24	122.79	49.46		4415.74
19	25	121.43	50.82		4364.92
19	26	120.04	52.21		4312.71
19	27	118.60	53.65		4259.06
19	28	117.12	55.13		4203.93
1930	29	115.61	56.64	6-19-30L	4147.29
1931	30	114.05	58.20	12-27-30L	4089.09
1931	31	112.45	59.80	6-23-31L	4029.29
19	32	~~110.31~~	61.44		3967.85
19	33	~~109.19~~	63.13		3904.72
19	34	~~107.38~~	64.87		3839.85
19	35	~~105.60~~	66.65		3773.20
19	36	~~103.76~~	68.49		3704.71
19	37	~~101.88~~	70.37		3634.34
19	38	~~99.94~~	72.31		3562.03
19	39	~~97.96~~	74.29		3487.74
19	40	~~95.91~~	76.34		3411.40
19	41	~~93.81~~	78.44		3332.96

AMORTIZATION TABLE

Year Due	No.	Interest	Principal	date paid	Initial	Balance
19	42	~~91.66~~	80.59			3252.37
1931	43	~~89.44~~	82.81	6-23-31	L	3169.56
1932	44	87.16	85.09	12-29-31	L	3084.47
1932	45	~~84.82~~	87.43	12-29-31	L	2997.04
19	46	82.42	89.83			2907.21
19	47	79.95	92.30			2814.91
19	48	77.41	94.84			2720.07
19	49	74.80	97.45			2622.62
19	50	72.12	100.13			2522.49
19	51	69.37	102.88			2419.61
1932	52	66.54	105.71	4-18-31	H	2313.90
1932	53	63.63	108.62	6-29-32	L	2205.28
1933	54	60.65	111.60	12-21-32	L	2093.68
19	55	~~57.68~~	114.67			1979.01
19	56	~~54.42~~	117.83			1861.18
19	57	~~51.18~~	121.07			1740.11
19	58	~~47.85~~	124.40			1615.71
19	59	~~44.43~~	127.82			1487.89
19	60	~~40.92~~	131.33			1356.56
19	61	37.31	134.94			1221.62
19	62	33.59	138.66			1082.96
19	63	29.78	142.47			940.49
19	64	~~25.86~~	146.39			794.10
19	65	21.84	150.41			643.69
19	66	17.70	154.55			439.14
1933	67	~~13.45~~	158.80	4-21-33	S	330.34
19	68	9.08	163.17			167.17
19	69	4.60	167.17			
19	70					
19	71					
19	72					

6	141.90	30.35	6	22	L	5129.65	19	47	79.95	92.30		2720.07
7	141.07	31.18	12	27	W	5098.47	19	48	77.41	94.84		2622.62
8	140.21	32.04	6	28	W	5066.43	19	49	74.80	97.45		2522.49
9	139.33	32.92	12	27	29	5033.51	19	50	72.12	100.13		2419.61
10	138.42	33.83	6	19	30L	4999.68	19	51	69.37	102.88		2313.90
11	137.49	34.76				4964.92	1932	52	66.54	105.71	4-18-31	H 2205.28
12	136.54	35.71				4929.21	1932	53	63.63	108.62	6-29-32	L 2093.68
13	135.55	36.70				4892.51	1933	54	60.65	111.60	12-21-32	L 1979.01
14	134.54	37.71				4854.80	19	55	~~57.58~~	114.67		1861.18
15	133.51	38.74				4816.06	19	56	~~54.42~~	117.83		1740.11
16	132.44	39.81				4776.25	19	57	~~51.18~~	121.07		1615.71
17	131.35	40.90				4735.35	19	58	~~47.85~~	124.40		1487.89
18	130.22	42.03				4693.32	19	59	~~44.43~~	127.82		1356.56
19	129.07	43.18				4650.14	19	60	~~40.92~~	131.33		1221.62
20	127.88	44.37				4606.77	19	61	37.31	134.94		1082.96
21	126.66	45.59				4560.18	19	62	~~33.59~~	138.66		940.49
22	125.40	46.85				4513.33	19	63	29.78	142.47		794.10
23	124.12	48.13				4465.20	19	64	~~25.86~~	146.39		643.69
24	122.79	49.46				4415.74	19	65	21.84	150.41		439.14
25	121.43	50.82				4364.92	19	66	17.70	154.55		330.34
26	120.04	52.21				4312.71	1933	67	~~13.45~~	158.80	4-21-33	S 167.17
27	118.60	53.65				4259.06	19	68	9.08	163.17		
28	117.12	55.13				4203.93	19	69	4.60	167.17		
29	115.61	56.64	6-19-30L			4147.29	19	70				
30	114.05	58.20	12-27-30L			4089.09	19	71				
31	112.45	59.80	6-23-31L			4029.29	19	72				
32	~~110.81~~	61.44				3967.85						
33	~~109.12~~	63.13				3904.72						
34	~~107.38~~	64.87				3839.85						
35	~~105.60~~	66.65				3773.20						
36	~~103.76~~	68.49				3704.71						
37	~~101.88~~	70.37				3634.34						
38	~~99.94~~	72.31				3562.03						
39	~~97.96~~	74.29				3487.74						
40	~~95.91~~	76.34				3411.40						
41	~~93.81~~	78.44				3332.96						

(Interest payments ruled out are not paid)

..... , 19....

For value received we hereby guarantee the payment of the within note, according to the terms thereof, both as to principal and as to interest.

Knox National Farm Loan Association.
.....

By L. R. Kempton Sec.-Treas.
.....

Military District, according to a subdivisional survey of said quarter township made by S. W. Farquhar, esquire, and duly recorded in book P, pages 574-5-6 of the Records of Deeds of Knox County; said lot estimated to contain 93.90 acres.

Second Tract: Lying and being in the County of Knox and State of Ohio, and in the first quarter of the fifth town- [fol. 45] ship, fifteenth range United States Military Lands situated in Knox County and the state aforesaid and being taken off the southwest portion of lot 23, commencing at the southwest corner of said lot and running north to the southwest corner of the lot owned by Wm. Jones and wife; thence east to the east line of said lot; thence south to the northeast corner of Samuel Van Sickle's lot; thence west to the northwest corner of said lot; thence south to the southwest corner of said lot; thence west along the south line of said lot twenty-three to the place of beginning containing forty-three acres be the same more or less.

Third Tract: Lying and being in the County of Knox and State of Ohio, towit: 30 acres of land out of the southeast corner of lot 23, in the Rathbone section so called, being in the first quarter of township 5, range 15, United States Military lands in Knox county, Ohio, and more particularly described as follows:

Beginning at the southeast corner of lot #23; running north on the line between lots 23 and 22, a distance equal to ⅔ the length of said line being 97⅓ poles; thence west such a distance as to include the said 30 acres by running a line south to the south boundary of lot 23 which said last line is to be run parallel to the said line between lots 23 and 22.

MC.

To Have and to Hold the same to the only proper use of the said part, its successors and assigns forever.

This Mortgage is given to secure said loan made by the party of the second part to the parties of the first part as is evidenced by a first mortgage note duly executed and delivered by * * * Marshall B. Roberts: Enid M. Roberts: Constant J. Roberts Childs and R. F. Childs * * * to the party of the second part, and payable to its order;

said note being in said principal sum of * * * Fifty-Three Hundred * * * Dollars, and bearing interest on same at the rate of five and one-half per centum per annum, payments to be made on the amortization plan in accordance with the terms and conditions of said first mortgage note, which is made a part of this mortgage as fully as if wholly written herein.

The Parties of the First Part hereby expressly warrant the title to said real estate and further expressly covenant that they have a good right to sell, convey and mortgage the same; that same is free from all encumbrances, prior to, or on an equality with this mortgage, that they have a good and perfect title to the same against all persons whomsoever and that this mortgage is and shall be the first and best lien against said premises.

The Parties of the First Part further covenant and agree with the party of the second part:

First. That they will pay when due all taxes, liens, judgments or assessments which may be lawfully assessed [fol. 46] against the property hereby mortgaged and all charges of every character against the same, and any such taxes, liens, judgments, assessments or charges, not paid when due, may be paid by the mortgagee and when so paid shall become immediately due to the party of the second part, shall become a part of the mortgage debt and shall bear simple interest at the rate of eight per centum per annum until paid. The parties of the first part further agree, immediately upon the payment of same, to furnish to the party of the second part receipts of the proper officers, or parties, for all such payments, and it is agreed that all irregularities and defects in the levy or assessment and the right to insist that the personal property be first exhausted in the payment of such taxes and assessments are hereby expressly waived, and the receipt of the proper officers shall be conclusive evidence as to the amount and validity of such payments. The parties of the first part will, during the term of this mortgage, duly assess said real estate for taxation at the time prescribed by law.

Second. That the whole and every portion of said loan shall be expended only for the purposes specified in the original application, which application is hereby made a part of this mortgage the same as if fully copied herein,

provided that a part of said loan may be used to pay for stock in the Farm Loan Association required to be subscribed and paid for in order to secure this loan, and except further, that the party of the second pary may permit said loan to be used for any other purpose authorized by the Federal Farm Loan Act, said permission to be given in writing only.

Third. That said loan is to be repair on an amortization plan by means of a fixed number of annual, or semi-annual, installments sufficient to cover the charges and amounts to be applied on the principal, as provided in and required by, The Federal Farm Loan Act as if fully provided for in said first mortgage note.

Fourth. To take good care of said real estate and not to commit waste, or allow the same to be committed on said premises, but will cause the same to be worked and cultivated in a proper and farmerlike manner at all times and will not cut or remove any timber or improvements from said land, except such as may be needed for ordinary farming purposes and shall ke-pt said lands in as good condition for farming purposes as they are now in and will keep the houses, fences and other improvements on said land in good condition and repair at all times.

Fifth. To pay all expenses incurred by the party of the second part in securing abstracts of title and for attorney's fees in protecting the security of this mortgage, the said part- of the first part will pay, in addition to the taxable costs, an adequate and reasonable sum as a solicitor's or attorney's fee, the amount thereof to be fixed by the court and included in the judgment or decree.

Sixth. Upon commencement of a suit in foreclosure of this mortgage or at any time during the pendency thereof, the court in which such suit is pending, upon application of the party of the second part, its successors or assigns, may at once and without notice to the parties of the first part, or any person claiming under appoint a receiver for said premises to take possession thereof, to collect the rents, issues and profits of said premises, and out of the same to make necessary repairs and keep said premises in proper condition and repair, and to pay all taxes and assessments accruing during said receivership, and all taxes

and assessments unpaid and tax sales remaining unredeemed at or prior to the foreclosure sale, and to pay insurance premiums necessary to keep said premises insured in accordance with the provisions of this mortgage and the [fol. 47] expense of the receivership.

Seventh. To keep the buildings upon said premises insured against loss or damage by fire in some good, reliable insurance company or companies, to be approved by the party of the second part, its successors or assigns to the amount of not less than * * * Twenty-Five Hundred Dollars, with loss, if any, payable to said party of the second part, its successors or assigns, as its, or their, interest may appear at time of loss, and forthwith upon issue shall deposit said policy with said party of the second part, its successors or assigns. In case the parties of the first part shall fail to comply with the conditions of this mortgage concerning said insurance, then the party of the second part shall have the right to take out said insurance, pay the premiums on same, and any insurance premium paid by the party of the second part to protect its security hereunder shall become a part of this mortgage and shall bear interest at the rate of eight per centum per annum from date of said — until paid.

This Mortgage, and the note secured thereby are executed and delivered under and in accordance with the said Federal Farm Loan Act, and are subject to all the terms, conditions and provisions thereof, which Act is made a part hereof the same as if set out in full herein.

The Condition of this Mortgage is, that if the parties of the first part shall well and truly make all the payments called for in said first mortgage note in accordance with its terms and tenor and shall perform each and every one of the covenants, conditions and agreements, either in said note or this mortgage contained, then the same shall be null and void, but if the parties of the first part shall, in any wise, be in default in respect to any of such payments or in respect to the performance of any of the conditions, covenants or agreements in said note or this mortgage contained, the whole indebtedness provided for herein or in said note, together with all interest on same, all of which is hereby secured by this mortgage, shall, at the option of the said The Federal Land Bank of Louisville, its successors or assigns become due and payable forthwith without de-

mand or notice, notice of exercise of such option being hereby expressly waived, and same may be immediately collected by suit to enforce the same, or otherwise, and it is agreed that the party of the second part shall thereupon be entitled to enter into the possession of said mortgaged premises, and to collect the rents, issues and profits thereof, and apply the same on the debt hereby secured. The omission of said mortgagee to exercise any option upon any default as aforesaid, shall not preclude it from the exercise thereof upon any subsequent default.

When the Note Secured by this Mortgage shall have been fully paid off in accordance with its terms and tenor, then this mortgage shall be duly released by the party of the second part, but all legal fees pertaining to such release shall be paid by the parties of the first part.

In Witness Whereof, the said * * * Marshall B. Roberts, unmarried; Enid M. Roberts, unmarried; Constant J. Roberts Childs and R. F. Childs, her husband, who hereby releases all his right and expectancy of Dower in the said premises, have hereunto set their hands this 18th day of May, in the year of our Lord one thousand nine hundred and twenty-five.

[fol. 48] Signed and acknowledged in presence of Guy C. Bishop. C. H. Bishop.

Marshall B. Roberts, Enid M. Roberts, Constant J. Roberts-Childs, R. F. Childs.

STATE OF OHIO,
County of Knox, ss:

Be it Remembered, That on this 23rd day of May, in the year of our Lord one thousand nine hundred and twenty-five, before me, the subscriber, a Notary Public in and for said county, personally came * * Marshall B. Roberts, unmarried; Enid M. Roberts, unmarried; Constant J. Roberts Childs and R. F. Childs, her husband * * * the grantors in the foregoing Mortgage, and acknowledge the signing thereof to be their voluntary act and deed.

In Testimony Whereof, I have hereunto subscribed my name and affixed my official seal on the day and year last aforesaid.

Guy C. Bishop, Notary Public, Knox County, Ohio.

Release of Mortgage

Louisville, Ky., —— —, 19—.

The debt secured by the within mortgage having been paid in full, this mortgage is cancelled and released, and the Recorder of —— County, Ohio, is authorized to enter satisfaction thereof of record.

The Federal Land Bank of Louisville, by —— ——,
Its President.

Attest: —— ——, Its Secretary.

LS.

[Endorsed:] 4676. Knox N. F. L. A. R. C. I. No. 32174. Marshall B. Roberts, unmarried; Enid M. Roberts, unmarried; Constant J. Roberts Childs, her husband to [fol. 49] The Federal Land Bank of Louisville. Mortgage. Dated the 17th day of May, 1925. State of Ohio, County of Knox. Received for record on the — day of —— 19—, at — o'clock — M., and recorded in Volume — of Mortgages, on pages —. Filed ——, —— Recorder. At 10 o'clock A. M., June 6, 1925. Recorded June 8, 1925. Record Mtg. Vol. 75 Page- 606 & 607. L. L. Fletcher, Recorder. $2.60. The recorder will please return recorded mortgage promptly to the Federal Land Bank of Louisville, Ky. 6-19.

[fol. 50] Said mortgage was duly filed for record with the Recorder of Deeds of Knox County, Ohio, on June 8, 1925, at 10:00 o'clock, A. M., and was by him recorded in Volume 75 at page 606 of the Mortgage Records of said County. Said mortgage constitutes a first and best lien on the mortgaged property.

The installments due on said note were paid to and including the installment due on January 1, 1933 and a partial payment of $65.84 on April 21, 1932, on the July 1, 1933 installment.

The installments due on July 1, 1933 and June 1, 1934, have not been paid nor has any part thereof or any interest thereon been paid, except as hereinabove stated.

The Bank has elected and declared, and hereby elects to and declares, its whole debt secured by said mortgage to

be immediately due and payable and in default, and the terms of the said mortgage to have become absolute.

Third Cause of Action

The allegations hereinbefore made are made a part hereof by reference as fully as if copied herein.

On or about October 10, 1927 the plaintiff, Arthur C. Phillips and Mary F. Phillips executed and delivered to the defendant Bank their instrument, dated October 10, 1927, in writing which was and is in words and figures as follows:

[fol. 51] Form 110.
5-23-2500.
B. C. & F.

Loan No. 32174

One Loan on This Security

(1)

To the Federal Land Bank of Louisville, Louisville, Kentucky:

This is to Certify that I (or we) for the sum of $15,000.00 Dollars, have purchased the entire tract of land which was mortgaged to you by Marshall B. Roberts to secure a loan from you in the sum of Fifty-three Hundred ($5300) Dollars, and I (or we) have assumed the payment of said indebtedness and have purchased the original shares of stock held by the vendor in the Knox National Farm Loan Association, and have assumed all the liabilities of membership thereunder.

Dated at —— the 10 day of October, 1927.

Signature of Purchaser: A. C. Phillips; Permanent Address: Centerburg, Ohio.

Signature of Purchaser: Mary F. Phillips; Permanent address: Centerburg Ohio.

Witness: Edith L. Horn.

I (or we) certify that the above statements are true, and I (or we) hereby confirm the sale and authorize the Secre-

tary-Treasurer to legally transfer the original shares of stock to the purchaser or purchasers set out above.

Signature of Seller: M. B. Roberts, Constant Roberts-Childs.

Signature of Seller: Enid M. Roberts.

Witness: Edith L. Horn.

This is to Certify that A. C. Phillips having purchased the entire farm of Marshall B. Roberts, on which there is a Mortgage or Trust Deed to the Federal Land Bank of Louisville in the sum of Fifty-three Hundred Dollars, and the stock interest thereof, the said A. C. Phillips has been [fol. 52] elected to membership in the Knox County National Farm Loan Association.

Dated at Mt. Vernon, the 24 day of Oct. 1927.

Jno. Cunningham, President.

Attest: E. B. Tucker, Secretary-Treasurer.

Important: Read Carefully and Fill in All Above Spaces.

Loan cannot be transferred unless entire farm covered by loan is sold to party seeking to assume loan.

Purchase price requested in above form means the entire consideration. The stock interest of the vendor must be transferred to the purchaser. $5.00 transfer fee must accompany this form when same is returned to the Federal Land Bank.

Do Not Write in this Spaee. It is for Use of Federal Land Bank Only.

State Ohio County Knox App. Stokesbury Land 9300 Imp. 5000

Date Rec'd Fee Paid 10-26-27 Entered By Ledger Sheet Index Index Register Plate Card Record.

[fol. 53] Wherefore, The Federal Land Bank of Louisville prays:

(1) That the defendants and each of them named in this petition be required to make answer hereto or be forever barred.

(2) That the Court find due the plaintiff the following sums:

$106.41 due July 1, 1933,
170.93 due January 1, 1934

with interest on each of said sums at the rate of 5½ per centum (5½%) per annum from the aforesaid respective due date thereof until paid.

(3) That the Court render judgment for it against A. C. Phillips and Mary F. Phillips and each of them, in the sums so found due, with interest thereon as aforesaid.

(4) That to secure it in the payment of the foregoing sums, and each of them, The Federal Land Bank of Louisville be adjudged to have a lien on the mortgaged property herein described prior and superior to all other interests in and/or claims against said mortgaged property.

(5) That the lien of The Federal Land Bank of Louisville be enforced, and the mortgaged property to be sold to satisfy the lien of the Federal Land Bank of Louisville, and the proceeds thereof by applied to the payment of its indebtedness and the satisfaction of its lien.

For its costs herein expended and all other proper relief.

Roger D. Branigin, Paul J. Fleming, Counsel for The Federal Land Bank of Louisville.

[fol. 54] *Duly sworn to by Frank D. Rash. Jurat omitted in printing.*

[fol. 55] Exhibit "A" to answer omitted. Printed side fol. 25, ante.

[fol. 56] RECITAL AS TO EXHIBIT "B"

Attached to the answer is copy of Indemnity Agreement which appears in the Bill of Exceptions as Exhibit F.

[fol. 57] In Court of Common Pleas of Knox County

[Title omitted]

Answer of Plaintiff to Cross-Petition of Defendant The Federal Land Bank of Louisville—Filed March 28, 1935

Now comes the plaintiff, and by leave of the Court, files this his Answer to the Cross Petition of the Defendant, The Federal Land Bank of Louisville, and says:

He admits the corporate existence of said defendant, as alleged in said Cross Petition.

He admits the execution and delivery of the note and mortgage mentioned and described in the first, second and third causes of action of said Cross Petition.

He admits the execution and delivery of the instrument mentioned and described in said third cause of action as set forth therein.

But said defendant says that he denies all allegations of said Cross Petition not herein specifically admitted to be true, and especially denies that there is due to said Cross Petitioner upon said note and mortgage and upon his contract assuming same hereinabove mentioned, the sum and/or sums alleged in said Cross Petition, to said Cross Petitioner, or to any other person; and further denies that there is any sum whatsoever due upon the said note and the said mortgage mentioned and deschibed in said Cross Petition, from this plaintiff, or from any one else, to said Cross Petitioner, by reason of the facts alleged in plaintiff's Petition heretofore filed.

[fol. 58] Wherefore, plaintiff having fully answered said Cross Petition, prays that it may be dismissed at Cross Petitioner's costs.

Arthur C. Phillips, by Henry C. Devin, His Attorney.

Duly sworn to by Arthur C. Phillips. Jurat omitted in printing.

[fol. 59] IN COURT OF COMMON PLEAS OF KNOX COUNTY

[Title omitted]

REPLY OF PLAINTIFF TO ANSWER OF DEFENDANT THE KNOX NATIONAL FARM LOAN ASSOTIATION—Filed March 28, 1935

Now comes the plaintiff, and by leave of the Court, files this his separate Reply to the Answer of the defendant, The Knox National Farm Loan Association, and says:

That he admits the allegations of said Answer relative to the corporate organization and existence of each of the two defendants to this action; That he admits the allegations of said Answer relative to the loan granted and made by the defendant The Federal Land Bank of Louisville, as mentioned in said Answer, and the execution and delivery of the note and mortgage evidencing and securing said loan as mentioned and set forth in said Answer; and further admits the purchase by plaintiff from the original borrowers, above mentioned, of the same premises described in plaintiff's Petition, and that they are the same premises which secured said Bank's loan to the original borrowers, and are the same premises mentioned and described in said Answer of the defendant The Knox National Farm Loan Association; and further admits the assumption of the said mortgage debt of said original borrowers, and the acquiring of the stock interest of said original borrowers by this plaintiff, as set forth in said Answer.

Further replying, said plaintiff says that he admits the allegations of said Answer in respect to the amount of the indebtness of plaintiff to said Bank on said mortgage debt on March 25, 1933, and the fact that on said date plaintiff paid thereon the sum of $1857.46 and surrendered his Cer-
[fol. 60] tificate of Stock for fifty-three (53) shares in the defendant Association; and further admits that on said last mentioned date, and at all times since said date, the said defendants Association's indebedtness to said defendant Bank for established losses under mortgages endorsed and guaranteed by said Association in favor of said Bank, has exceeded said Association's assets; and further admits that said Association's obligations to said defendant, The Federal Land Bank of Louisville, as endorser and guarantor of said mortgages and debts which have become delinquent, and continued, and do now continue, to exceed the

assets of said Association out of which payment of same can be made.

As to all other allegations of said Answer, which are of an affirmative nature and are not corroborative of the allegations of said Petition, plaintiff says, concerning some he has no knowledge, and others are untrue, and he therefore denies each and all of same and demands proof thereof.

Wherefore, Plaintiff again prays as set forth in his Petition heretofore filed herein.

Arthur C. Phillips, by Henry C. Devin, His Attorney.

[fol. 61] *Duly sworn to by Arthur C. Phillips. Jurat omitted in printing.*

[fol. 62] In Court of Common Pleas of Knox County

[Title omitted]

Reply of Plaintiff to Answer of Defendant The Federal Land Bank of Louisville—Filed March 28, 1935

Now comes the plaintiff, and by leave of the Court, files this his Separate Reply to the Answer of the defendant The Federal Land Bank of Louisville, and says:

That he admits the allegations of said Answer relative to the corporate organization and existance of said defendant; that he admits the allegations of said Answer relative to the loan granted by said defendant as mentioned in said Answer, and the execution and delivery of the note and mortgage evidencing and securing said loan as mentioned and set forth in said Answer; and further admits the assumption of the mortgage debt and the acquiring of the stock interest of the original borrowers by this plaintiff, as set forth in said Answer.

Further replying, said plaintiff says that he admits the allegations of said Answer in respect to the amount of the indebtedness of the defendant The Knox National Farm Loan Association to said defendant The Federal Land Bank of Louisville on March 25, 1933, as alleged and set forth in said Answer; and further admits that on said date, and at all times since said date, the said defendant

Association's indebtedness to said defendants Bank for established losses under mortgages endorsed and guaranteed by said Association in favor of said Bank has exceeded said Association's assets; and further admits that said Association's obligations to said defendant, The Federal Land Bank of Louisville as endorser of said mortgages [fol. 63] which have become delinquent, have continued, and do now continue, to exceed the assets of said Association out of which payments of same can be made.

As to all other allegations of said Answer, which are of an affirmative nature and are not corroborative of the allegations of the Petition, plaintiff says concerning some he has no knowledge and others are untrue, and he therefore denies same and demands proof thereof.

Plaintiff further says that he especially denies that there is any provision of either Federal or State law that prevents or excuses the defendant, The Knox National Farm Loan Association from the payment and retirement of the stock held by said plaintiff, as alleged in his Petition until said Association shall have made provisions for the satisfaction of its obligations to cretitors and to the other stock holders who have paid their loans in full.

Plaintiff further especially denies that the Federal Farm Loan Act mentioned in said Answer confers jurisdiction that is exclusive for the appointment of a Receiver on the ground of insolvency, and in reference to the defendant The Knox National Farm Loan Association, upon the Farm Credit Administration and its Land Bank Commissioner.

Wherefore plaintiff again prays as set forth in his Petition heretofore filed herein.

Arthur C. Phillips, by Henry C. Devin, His Attorney.

[fols. 64 & 65] *Duly sworn to by Arthur C. Phillips. Jurat omitted in printing.*

[fol. 66] In Court of Common Pleas of Knox County

Arthur C. Phillips, Plaintiff,

vs.

The Knox National Farm Loan Association and The Federal Land Bank of Louisville, Defendants

Bill of Exceptions

Appearances:

Mr. H. C. Devin, for plaintiff.

Messrs. Armand L. Koethen, Paul J. Fleming and C. L. Bermont, for defendants.

Be it Remembered That at the hearing of this case at the April, 1935, term of said court, towit, on the 29th day of April, 1935, before Hon. Philip L. Wilkins, Judge of said court, the following tender was made on behalf of plaintiff:

Tender of Payment

Mr. Devin: On behalf of the plaintiff we tender the full payment of this mortgage loan, the amount that was due thereon March 25, 1935, $265.00, on condition that the original note and mortgage be canceled and surrendered, and on condition further that the defendant, the Knox National Farm Loan Association cancel and pay off to him the 53 shares of stock held by him in The Knox National Farm Loan Association.

Mr. Fleming: The offer and tender are refused.

Statement of Counsel

And thereupon, counsel for plaintiff, Mr. Devin, proceeded to state to the court the claim of plaintiff, as follows:

Mr. Devin: This is an action brought by the plaintiff Arthur C. Phillips, and in order that the court may understand this case as to what it is about, I will endeavor to [fol. 67] shorten the statement as much as possible, and will read at least a portion of the petition.

The Court: I have read it, Mr. Devin.

Mr. Devin: Very good then. I will not take the time. The petition endeavors to set forth the cause of action which this plaintiff claims against these defendants, which

means it summarizes briefly that he assumed and agreed to pay the balance due upon a loan when he bought the property from a certain man by the name of Roberts, and others, and in that connection he took over from the owners of the farm in question 53 shares of stock of The Knox National Farm Loan Association, and thereupon a new certificate was issued directly to this plaintiff for the 53 shares and the Knox National Farm Loan Association took these shares as collateral security for the balance still remaining due upon the loan, and issued to him a receipt for the collateral, at which time it was agreed between the plaintiff and The Knox National Farm Loan Association that upon the payment of the loan that The Knox National Farm Loan Association would redeem and pay off the 53 shares of stock at the par value of five dollars per share, being $265.00. The Knox National Farm Loan Association issued a receipt for that collateral, and that receipt was signed by the secretary and treasurer of the organization, Mr. E. B. Tucker, and contains language as follows, referring to the stock, "it will be accepted at face value on final payment of the loan." Now in March, 1933, this plaintiff went to the office of The Knox National Farm Loan Association, and saw the secretary-treasurer, Mr. Tucker, and advised him that he wished to pay off the loan in full and secure a cancellation and release of the mortgage in question, and they made some careful calculation of the amount remaining due upon the loan, and I am not sure whether that was confirmed by correspondence with The Federal Loan Bank or not, but at any rate they agreed that if the $265 was allowed [fol. 68] as a part of the payment that there would be a balance still remaining due in cash upon the loan of $2122.50, and that was a liberal figuring, because if there were any odd cents involved I guess he paid a little more than the actual amount of the figuring. Now that amount was paid into the hands of the secretary-treasurer, Mr. Tucker, and in due course Mr. Phillips was informed that the Federal Land Bank declined to release and return the note and mortgage in question, but indicated they would apply whatever moneys were remitted to apply upon the loan, and so as a matter of fact the amount was forwarded to The Federal Land Bank and applied upon the loan, and that left a balance of about $265 remaining unpaid, which the plaintiff in this case was demanding should be paid out of the re-

demption of his stock in The Knox National Farm Loan's hands. Now since that time the Federal Land Bank of Louisville has continuously declined to cancel and release the note and mortgage in question, and The Knox National Farm Loan Association has failed and declined to redeem the 53 shares of stock at par value thereof, in accordance with the Federal, Statute, and in accordance with its specific agreement to which I have referred. Now consequently this plaintiff brings this action, alleging the facts I have covered here, and prays that his title be quieted, and that the lien upon the farm in question be canceled, and that The Knox National Farm Loan Association be obliged to redeem this stock, or if it should declare itself to be insolvent, and the court so finds, that in view of its insolvency that it be placed in the hands of a receiver, according to statute, and liquidated and wound up. Consequently this action, as I view it, is based upon a petition here which is fundamentally an action to quiet title, and upon the ground that these two concerns, the two defendants here, are engaged in the business of loaning money, the one through the other, [fol. 69] and that they were both engaged in this enterprise; that this plaintiff has offered to pay in full the entire debt, if and when he receives $265 allowance, in accordance with the agreement which he has received from The Knox National Farm Loan Association.

STATEMENT OF COUNSEL

Mr. Fleming: If the court please, the statement of facts, as presented by Mr. Devin, are substantially correct. I would just like to point out to the court that at the time Mr. Phillips assumed the note and mortgage he received a receipt from The Knox National Farm Loan Association which evidenced a certificate for 53 shares of stock of The Knox National Farm Loan Association, and this receipt at the bottom had typed on there that it would be accepted on the final payment of the loan, but the note and mortgage were held by The Federal Land Bank of Louisville. Now The Knox National Farm Loan Association and The Federal Lank Bank, while they are incorporated under the same Act of Congress—the Federal Farm Loan Act—yet they are separate and distinct corporations. One is not controlled by the other, and they have no common officers, and the business operations of the one are not conducted by the

other, so that when Mr. Phillips tendered the $2122.50, in 1933, to pay off his loan, it fell short by $265 of paying it off in full. The $265 is represented by stock held by Mr. Phillips of The Knox Farm Association, therefore the Bank is not obliged to accept stock held by him in that Association as payment of his debt to the Bank.

(Court called from room, and returns.)

The Court: Now you may proceed, Mr. Fleming.

Mr. Fleming: And also, under the law, Mr. Phillips, before he could be a borrower from The Federal Land Bank, must become a stockholders in The Knox National Farm Loan Association. In other words, this is a co-operative thing, and in order to borrow from the Association he must [fol. 70] purchase stock in the Association equal to five per-cent of the gross amount of the loan, and that is the stock which Mr. Phillips holds.

The Court: Is there any place along the line that the Farm Loan Association becomes obligor to The Federal Land Bank?

Mr. Fleming: I am just coming to that.

The Court: Very well.

Mr. Fleming: In March, 1931, The Knox National Farm Loan Association entered into an agreement with The Federal Land Bank—a copy of the agreement is attached to the pleadings, and it is called the "Indemnity Agreement." The purpose of the agreement was to minimize losses in their affairs as they were able to, in the actual operation of their business. An Indemnity Agreement provided, in part, that in foreclosure—I mean in losses following through a foreclosure action when the Bank is compelled to take in a farm—any loss caused by the re-sale will be charged against the Association, and the reason the Association is chargeable is because they are an endorser on the mortgage note— the original note. And during the period from 1931 up to the present time there has been—there have been losses incurred by reason of the necessity of the Bank bidding in farms which were foreclosed upon, and which The Knox National Farm Association was liable for upon the mortgage notes.

The Court: Did the Loan Company sign that application contemporaneously with the mortgage loan—the original borrowers?

Mr. Fleming: That is right. Yes. This was signed at the same time the original borrowers borrowed the money.

The Court: Now it is your position that there was that provision or arrangement between Phillips and The Federal Land Bank obligated him to redeem this stock?

[fol. 71] Mr. Fleming: That is right. He is a stockholder of the Loan Association but not of the Federal Land Bank.

COLLOQUY

The Court: Any reply to that statement, Mr. Devin?

Mr. Devin: My answer to the statement is this; that these are both corporations existing under Federal law, and incorporated under the provisions of what is known as the Federal Farm Loan Act, and by the provisions of Section 721, upon the payment of the borrower's loan—I think possibly it has not been brought out to the court and maybe I better make this statement again——

The Court: Before proceeding to make that more definite, that is 721?

Mr. Devin: It is 721 of what is known as the Federal Farm Loan Act.

Mr. Fleming: That is like the United States Code, it is part of Title 12. Section 721.

Mr. Devin: Just before reading what I have in mind I want to call the court's attention—I don't think it has been brought out, but probably the court understands it. Under the procedure of a loan such as this, when the borrower purchases the required amount of stock The Knox National Farm Loan Association is required by law to use that money to purchase the exact equivalent amount of stock in a Federal Farm Loan Bank, and consequently The Knox National Farm Loan Association, at that very time, became the owner of the exact and same amount of stock of The Federal Farm Loan Bank, which it put up as collateral security in connection with this loan. I believe that is not disputed?

Mr. Fleming: Yes, that is the fact.

Mr. Devin: Now, consequently, disregarding for the moment the fact that Phillips acquired his stock from the [fol. 72] original borrower—that wouldn't make any difference, but simplyfying it as though he was making his loan originally, directly he is required to purchase a certain amount of stock of The Farm Loan Association, and at that

very time The Knox National Farm Loan Association buys, with the same money, the exact amount of stock in The Federal Farm Loan Bank of Louisville. Now the provisions of the section I have indicated (consulting book), going down to—"Such capital stock shall be held by said Land Bank as collateral security for the payment of said loan, but said Association shall be paid any dividends accruing and payable on said capital stock while it is outstanding." That is referring to the stock of the Knox National Farm Loan Association when it is purchased from The Federal Land Bank. "Such stock may, in the discretion of the directors, and with the approval of the Federal Farm Loan Board, be paid off at par and retired from full payment of the mortgage loan. In such case The National Farm Loan Association shall pay off at par and retire the corresponding shares of its stock which were issued when said Land Bank stock was issued." You will observe that it is required by this section that I have just read that upon the payment of the loan in full that The Knox National Farm Loan Association shall pay off and retire that stock, and at the same time and for the same reason that the Federal Land Bank——

The Court: Were to do likewise.

Mr. Devin: Were to do likewise with respect to the stock that has been taken by The Knox National Farm Loan Association. Now I am still aware of the fact that counsel will claim that the provisions of this statute are disregarded by the decision of the North Dakota (Byrne) case. However, I shall expect to be able to point out to this court substantial reasons why the decision in the North Dakota case shall not be applied to this case, and that the facts of the two cases [fol. 73] are considerably different. Now from the statement made by counsel on behalf—as I understand counsel represents both of these defendants—I am not quite clear and I was not clear when I read the pleadings, whether it is now claimed that the defendant The Knox National Farm Loan Association is solvent or insolvent, and it seems to me that this is a proposition that might save us some considerable amount of investigation upon the part of this court if it was a matter that could be either admitted or denied. The allegation of the answer is that it cannot meet its current obligations; or something of the kind—I have forgotten the exact language—but it did not seem to me to

be a clear proposition as to whether it was an admission that the concern was insolvent or not.

The Court: Do you claim it is insolvent in your petition?

Mr. Devin: Yes.

The Court: Do counsel have any explanation to make for the benefit of counsel on that matter?

Mr. Fleming: Well, if Mr. Devin—a part of his case is based upon the fact that the Association is insolvent.

The Court: Your position is one of denial, then?

Mr. Fleming: Of denial, yes.

Mr. Devin: They do not admit it?

Mr. Fleming: No, we do not.

The Court: Now, gentlemen, can one of you indicate or dictate into the record what is in controversy in this case? —some agreed statement?

Mr. Koethen: We have tried to do that, but we are not able to get together.

The Court: In the main can you get together on certain portions to be taken by the court, under testimony?

[fol. 74] Mr. Devin: I call attention to the fact that the state of the pleadings, in my judgment—I am unable to find that under the state of the pleadings there is what is considered to be, as essential features of the case, very much for controversy.

The Court: I sensed that from what I have heard this morning, but if there is any material point you want we will listen to it.

Mr. Devin: The answers in this case are perfectly appalling in their size, and I consider that ninety percent. of the two answers are totally irrelevant and immaterial to the issues in this case. I didn't wish to delay proceedings to file a motion to strike out, but it seems to me we go into a mass of matter concerning which there is no controversy whatsoever, and a lot of it has nothing to do with this lawsuit.

The Court: Suppose you counsel confer and see to what extent you might agree upon the facts in this case, which will expedite the matters if you can agree to some extent.

(Provate conference, and parties return into court.)

Mr. Devin: Your Honor, with reference to our getting together on an agreed statement, it is my opinion that the only agreed statement that we can freely get together on is

what the pleadings disclose in the matter of the allegations and admissions.

The Court: Well, you may carry it through to that extent, then, if you care to.

Mr. Devin: Now I have tried to keep the matter at issue in this case down to what I consider to be the essentials for the determination of this lawsuit. Of course I have nothing to say about the cross-petitioner here. Whenever the cross-petition comes in it is for this gentleman to say what he wishes to allege, and what we may be able to deny. But this petition alleges that these defendants are both corporations organized and existing under the laws of the United [fol. 75] States, and under the provisions of the Federal Farm Loan Act. That is apparently admitted. And the principal office of The Knox National Farm Loan Association in the city of Mt. Vernon, and the principal office of the Federal Farm Bank in the city of Louisville, Kentucky. Now the plaintiff alleges that he is the owner of certain lands situated in Knox county—and I believe that is not disputed—and that he acquired them from Constance Roberts Childs and others on October 24, 1927, and by the terms of his purchase assumed and agreed to pay a certain mortgage upon the lands in question to the Federal Land Bank of Louisville,—all of which is not disputed, but is alleged in the petition; that the mortgage is recorded to secure the note, and at the time of its purchase there was a balance of $5160, which he assumed and agreed to pay. Now he further alleges that at the time these original parties executed and delivered the mortgage in question they were required to purchase 53 shares of the capital stock of the defendant The Knox National Farm Loan Association and deposit the same with said Association as collateral security for the payment of their loan, and at the same time, pursuant to the provisions of the law, that The Knox National Farm Loan Association purchased an equal amount of the stock of The Federal Land Bank of Louisville. "Plaintiff further says that upon his purchase of the real estate hereinabove mentioned, consisting of a farm, and the assumption of the mortgage aforesaid, that said 53 shares of the capital stock of said The Knox National Farm Loan Association of the par value of five dollars per share were purchased by and transferred to him for the sum of $265; that the said The Knox National Farm Loan Association, in

consideration of his assumption of said mortgage debt and acceptance of the transfer of said stock, and the deposit of the same with said The Knox National Farm Loan Association as collateral security for the payment of the loan afore-
[fol. 76] said, agreed that said plaintiff should be entitled to all of the rights and privileges theretofore agreed upon and given to the said original grantors in said deed to this plaintiff in respect to said 53 shares of said capital stock of the defendant The Knox National Farm Loan Association, and that said rights included an agreement on the part of said The Knox National Farm Loan Association that said stock would be accepted at its face value on final payment of said loan." Now it is further alleged that The Knox National Farm Loan Association issued its receipt to this plaintiff (Mr. Phillips) at that time, which contains the provision that it will be accepted at the face value on the final payment of the loan. Now it is alleged that from the time of its purchase until March 25th, 1933, that he made such payments to the defendant, and that on the last mentioned date the entire balance of the principal amounted to less than $2122.50, and that he paid that amount into the hands of The Knox National Farm Loan Association, being the sum of $1857.50, and surrendered at face value of $265 his 53 shares of the stock, and so forth. Now of course he claims that he has fully paid and satisfied the loan, and as I understand it that is denied. But up to this time I don't know any of these allegations that are denied.

The Court: Now let us stop there and make inquiry. Do you, Mr. Fleming, know of any denial up to that date of signing the notes he refers to?

Mr. Fleming: Yes, our answer practically admits all that.

Mr. Devin: Consequently we are down to the issue as to whether or not the payment of the sum of money alleged and the offer of the surrender of the stock should have paid the loan in full, and entitle Mr. Phillips to the cancellation of his mortgage, and now that is at issue. Now it is further alleged that "The Knox National Farm Loan As-
[fol. 77] sociation has made such losses in the operation of its business that its capital stock is impaired, and that it is continuing operation at the risk of further losses and further impairment, and that holders of such stock may become subject to assessment thereon for the purpose of paying liabilities heretofore created and now being created.

by said defendant. Plaintiff says that if said defendant The Knox National Farm Loan Association is permitted to continue its said operations that it may result in further losses and further impairment of said capital stock, and may result in an assessment upon stockholders to meet said loss and said impairment up to a possible amount equal to the par value of said stock." Now as I said before, I am not quite able to understand from the working on the subject in the answer as to whether or not it is admitted that the defendant The Knox National Farm Loan Association is insolvent or whether it is claimed it is solvent? (to opposing counsel). Now it might clear the matter up to have a clear statement from the defendant as to what is claimed on that proposition, as to whether this defendant The Knox National Farm Loan Association is solvent or insolvent.

The Court: Well, the court understands that heretofore counsel said he was denying the allegation?

Mr. Fleming: Well, we are inclined to admit at this time that the Association is insolvent. Incidentally, we have a statement prepared showing the condition of the Association, if Mr. Devin will agree to accept it, and that would save a lot of time.

The Court: Yes, it would.

Mr. Devin: How is that?

Mr. Koethen: That is in support of the statement as to the condition of the Association as of today.

Mr. Devin: Well, if you say it is insolvent that is about [fol. 78] all I would know about it if I looked at is, probably (laughing). Perhaps it would be well to let me look at it and it may not be necessary to put it even in evidence, in view of what counsel have just stated.

(Mr. Devin examines statement referred to.)

Mr. Devin: I think I can save the record by having this go in as it is. (Ex. B).

The Court: It will do no harm to put it in; it will probably shorten the case.

Mr. Devin: There is one point that I consider of importance from my standpoint, and that is I expect to point out to the court by your own attorney that additional insolvency is possible to be rolling up here all the time.

The Court: Yes.

Mr. Devin: And that the contingencies are not yet established.

Mr. Fleming: Yes, but the Association may work out.

Mr. Devin: Yes, that is a possibility. Do you mean the claims you hold for part of it?

Mr. Fleming: The Association may be in a position to refund that stock within the next month or——

The Court: Now, gentlemen, do you think it requires any testimony in addition to the stipulation and meeting of the issues made by the petition and the answer? Doesn't it simply become a question of law upon what has been stipulated?

Mr. Devin: Well, I consider it so.

The Court: Well, if that is so can't counsel agree?

Mr. Devin: I have this for the sake of the record. I would like to offer this in evidence, and have counsel waive the necessity of identifying it and so forth. I consider it to be the groundwork of this entire action.

[fol. 79] The Court: Probably there is no difference of opinion about that.

Mr. Devin: That is a receipt of The Knox National Farm Loan Association for Certificate No. 93, for 53 shares of the capital stock of said Association, issued to plaintiff, dated October 24, 1927.

(Said certificate receipt marked Exhibit A, hereto attached and made a part of this Bill of Exceptions.)

The Court: Take up now the question on the cross-petition, this issue having been made.

Mr. Fleming: We would like to have Mr. Devin admit the issuance of this indemnity certificate.

Mr. Devin: There will be no objection to it.

The Court: That is quite rulable here.

Mr. Fleming: There is a photostatic copy attached to our answer.

Mr. Devin: I think maybe I better just finish whatever I had in the matter of the proof of statement.

The Court: Maybe I was misled. If you haven't, then conclude it.

Mr. Devin: No, I think in addition to the receipt which I have presented—perhaps this will be admitted too?—that the amount tendered in payment, and paid by Mr. Phillips on March 25th, 1933, would be sufficient to pay his loan in

full if the 53 shares of stock were redeemed at par at that tim, at $265. Is that a fact?

Mr. Fleming: Yes.

Mr. Devin: Now as a further question of the evidence to be presented by this plaintiff: that The Knox National Farm Loan Association has been ever since this date in March, 1933, a continuing—continuing the business of making mortgage loans in this county, and when I examined the record last Saturday, I think, more than $100,000 is shown by its audit to have been added to its loans up to last August—August of 1934, which would be sufficient for [fol. 80] my purpose—that this Knox National Farm Loan Association has increased its loaning in Knox county by more than $100,000 since the payment of this loan was effected, and that in connection with all those loans it assumes a contingent liability by its endorsement on the repayment of the loan.

The Court: Are you in position to admit anything about it?

Mr. Koethen: No, we can't admit it is engaged in the business of making loans at all. It is the Federal Land Bank that makes the loans in the character of——

Mr. Devin: All right, I will put it another way: That The Knox National Farm Loan Association agree to indemnify the Federal Land Bank in risk of losses to the amount and extent that I have mentioned since that day?

Mr. Koethen: Let us use the words—(all talking at once!)—that The Knox National Farm Loan Association has endorsed and become liable for the payment of loans in the amount of more than $100,000, since September, 1933, and August, 1934; do you want that date?

Mr. Devin: The date I had here was the date he tendered the payment, on March 25th, 1933.

The Court: And you want to offer that summary of the financial statement for whatever purpose you want it in?

Mr. Devin: Well, I understand that now is—I now offer the statement (Exhibit B) that by stipulation is agreed to be a true statement from the books of the defendant The Knox National Farm Loan Association of its financial condition, as of April 23rd, 1935, marked Exhibit B. And for the benefit of the court in explanation that it is stipulated and agreed that the net deficit shown thereon of $997.60 does not reflect any loss or any gain that may be had as to

the future disposition of the three farms listed on page two of Exhibit B, which have been heretofore purchased at [fol. 81] sheriff's sale by The Federal Land Bank of Louisville, and are part of the loans guaranteed to the Federal Land Bank of Louisville by The Knox National Farm Loan Association. I think that is all that is necessary to state about it.

The Court: It is admitted.

(Exhibit B offered in evidence and admitted and the same hereto attached and made a part of this bill of exceptions.)

The Court: Does that conclude your case?

Mr. Devin: Yes, we rest.

Defense

Mr. Koethen: We are perfectly willing to admit——

The Court: When counsel presents his case in argument we can survey this matter and comment upon it. Now is there anything in support of the cross-petition?

Mr. Fleming: We would still like for Mr. Devin — finish about this agreement. He didn't dispose of it.

Mr. Devin: Yes, I got off on something else. As far as I am concerned the indemnity agreement is not disputed. I guess I will make no objection.

Said indemnity agreement, marked Exhibit F herein attached and made a part of this bill of exceptions.

Mr. Fleming: You might note that a copy of the indemnity agreement is attached to the answers of the defendants.

The Court: And will suffice for the purpose.

Mr. Fleming: And also at this time we would like to have Mr. Devin admit this certificate of stock held by The Knox National Farm Loan Association in The Federal Land Bank. I think you received a copy of it, Mr. Devin?

Mr. Devin: That is the original?

[fol. 82] Mr. Fleming: Yes.

Mr. Devin: All right.

Mr. Fleming: And it is agreeable to you to substitute a photostatic copy?

Mr. Devin: Yes.

Mr. Fleming: And certificate marked Exhibit C, certificate of stock representing 53 shares of stock, and offered in evidence.

(Said certificate of stock marked Exhibit C, hereto attached and made a part of this bill of exceptions.)

Mr. Fleming: And also I would like to introduce as an exhibit the original application made in connection with this loan, marked Exhibit D. (showing same to Mr. Devin).

Mr. Devin: I don't object to that on the ground that it is irrelevant, but that it is simply tending to encumber the record, since there is no issue on the subject at all but that the original parties made application for such loan and received it. It is rather a lengthy document and I can't see any reason for it.

The Court: What do you claim for it, Mr. Fleming?

Mr. Fleming: The application discloses the original amount of the loan, including sufficient money to pay for the stock of The Knox National Farm Loan Association, and it is agreed that it should be included in the face of the note and paid——

The Court: I note your petition sets that out, now what did you have in your answer—the cross-petition sets out the fact just related by Mr. Fleming.

Mr. Devin: I don't know; I would have to take a look at my petition.

The Court: Where is that? Some place in the petition I got it.

Mr. Koethen: It is in our answer.

[fol. 83] Mr. Devin: Which answer is it in, both of them?

Mr. Fleming: Yes.

The Court: Well, if counsel claims it is a material item of defense from his standpoint the court will have to pass upon it.

Mr. Devin: I am unable to see why the introduction of it is essential to the determination of this lawsuit. This party made application in a very long and elaborate form to secure this loan, and we admit that they did.

The Court: Is it possible that the assignee would be bound by any of the averments made in the original application of the borrower?

Mr. Fleming: In reference to the payment on the stock it is the only evidence we have to show that the money was so included on the face of the note.

The Court: And you claim that would be binding upon the assignee?

Mr. Devin: What difference does it make?

The Court: We will admit it now under reservation, and if we find there was no application it would be disregarded.

Mr. Devin: That is all right. My objection is particularly on the ground of the encumbering of the record, and it is irrelevant and immaterial.

Mr. Fleming: It will be agreeable to substitute photostatic copies?

Mr. Devin: Oh, yes.

(Said application marked Exhibit D, and same hereto attached and made a part of this bill of exceptions.)

Mr. Fleming: I think that disposes of everything we have except the cross-petition, in which we are asking for a foreclosure.

The Court: All right.

Mr. Fleming: Counsel has admitted that he assumed— [fol. 84] I think the only dispute about the note and mortgage is the amount due?

The Court: Yes, it resolves itself again to a question of law.

Mr. Fleming: We have the assistant treasurer of the Bank here that we could put on the stand and prove it.

The Court: Perhaps Mr. Devin would admit it.

Mr. Devin: The answer admits practically everything in the cross-petition, except the claim that there is anything due. Now I was just looking at your answer. He admits the corporate existence of the defendant and the execution and delivery of the note and mortgage mentioned, and admits the execution and delivery of the instrument mentioned and described in said third cause of action, and I don't know exactly what that is——

The Court: I assume you mean the figures?

Mr. Fleming: Yes, he made a tender of $265 and we refused it.

The Court: I think I will take some testimony on that. You may proceed on that.

[fol. 85] And thereupon the defendants, to maintain the issues on their part, called C. B. WUNDERLICH as a witness, who testified as follows:

Examined by Mr. Koethen:

Q. Your name?
A. C. B. Wunderlich (spelling name).
Q. You are employed by the Federal Land Bank?
A. Yes, sir.
Q. And what is your capacity in the bank, Mr. Wunderlich?
A. Assistant treasurer.
Q. In that capacity what are your duties—we will put it that way?
A. I have direct supervision over the records of the bank, and as such I am familiar with the contents of the records.
Q. You are familiar with the records in connection with this loan made to Mr. Roberts and others, and assumed by Mr. Phillips?
A. Yes, sir.
Q. Will you tell the court how much is due upon that loan at the present time?
A. At the present time there is due on this loan $327.92.
Q. How did you arrive at those figures?
A. The figures are arrived at in this manner; the regular installment which was due July 1, 1933, remains unpaid, and amounts to $172.25. The subsequent installment to that which was due January 1, 1934, amounts to $170.93. On February 6, 1935, an advancement was made by the Land Bank to cover insurance amounting to $27.75. There is delinquency or penalty interest rather on all delinquencies from the date it became delinquent until today, amounting to $23.83. Those items make a total of $393.76. Now against it there is applied a partial payment of $65.84, which was made April 21, 1933, leaving a net balance due today of $327.92.
Q. Mr. Devin, in your reply you have admitted the execution and delivery of this note and mortgage?
[fol. 86] Mr. Devin: Yes.
Q. It is your witness.

And on cross-examination by Mr. Devin as follows:

Q. Mr. Wunderlich, explain what you mean by penalty interest?

A. Regular interest is included in the regular installment to the date it becomes due. These two unpaid installments carry a penalty interest from the date it becomes due until today.

Q. Am I correct in stating then that the penalty interest refers to interest on unpaid interest?

A. Yes.

Q. And to that extent therefore it would be compound interest?

A. The installment—on the amortization form of payment is made up of principal and interest, and is one amount representing an installment, and if an installment is not paid when due it accrues penalty interest from the time it is due until it is paid.

Q. Then the penalty interest is interest on the total amount of the installment, which includes part principal and part interest?

A. Yes, sir.

Q. Now, Mr. Wunderlich, what was this a credit upon that of April 1933, of sixty some dollars? What was the date and amount again, please?

A. April 21, 1933, and the amount is $65.84.

Q. Have you any personal knowledge as to who paid that amount?

A. I have not; no, sir.

Q. You know nothing about this transaction except what you read upon the book; is that true?

A. What the records actually show; yes, sir.

Q. Now you don't know who paid this sixty some dollars?

A. No, sir.

Q. And as to the actual date of its payment, all you know is that it appears upon the book as of that date?

[fol. 87] A. That it was applied against this loan on April 21, 1933.

Q. On April 21, 1933, it was applied against this loan?

A. Yes, sir.

Q. Now, Mr. Wunderlich, does your record show a payment upon that loan, March 25, 1933, of $1857.50? Is that

correct? It is so blurred I can't make it out. $1859. Does your record show that payment, Mr. Wunderlich?

A. Yes, sir.

Q. What is the amount and date according to your record?

A. April 21, 1933.

Q. April 21st?

A. Yes.

Q. 1933?

A. Yes.

The Court: What is the amount, please?

A. This is the note record which as the amortization shows it an individual installment that was paid by *that* payment.

Q. The court has asked you a question; have you answered?

The Court: I was inquiring about the items. I wanted the exact amount as of April 21st.

A. I haven't got the exact amount here.

The Court: I see.

Q. Well, then, how do you know it was on April 21st, Mr. Wunderlich?

A. Because that was the date upon which this endorsement was made.

Q. What endorsement?

A. The payment.

Q. The payment of what?

A. The installment.

Q. No, I have asked you, and I will ask you again; what does your record show relative to the payment by this debtor of $1857.50, upon that obligation, upon March 25, 1933?

A. There is no payment applied on that date.

Q. Now are you testifying now from your recollection or from the books, or from that paper you hold in your hand?

A. I am testifying from the note itself.

Q. May I see it, please? (Note handed to counsel.) This [fol. 88] note that you have referred to—that is a note executed by Marshall B. Roberts and Enid M. Roberts to Constance Childs and Robert F. Childs?

A. Yes.

Q. And you are able to state whether or not this is the note which was subsequently assumed by Arthur C. Phillips, the plaintiff in this case?

A. Yes, sir, it is.

Q. And this paper I would like to have it marked for identification, please.

Mr. Fleming: It has already been admitted, Mr. Devin.

Q. Well, I don't know. Where is it? I know nothing about all the admissions as to these credits concerning which this man has been examined.

Mr. Fleming: A photostatic copy, and we admit it in the reply.

Q. And I admitted the execution of the note in question. If there is a photostatic copy containing the matters here set forth, well and good. But this witness is being examined about this matter.

(Mr. Fleming shows document to Mr. Devin.).

Q. That is good! Now this document, therefore, is the original of the photostatic copy that is filed with the pleadings in this case; is that correct?

A. Yes, sir.

Q. Well, now, Mr. Wunderlich, is there any credit given upon this application for payments by the plaintiff Arthur C. Phillips, of $1857.50, on or about March 25, 1933?

A. The payment was not applied until April 12, 1933.

Q. And are you able to explain to the court why the delay of about a month before it was credited?

A. The only delay was occasioned by the fact that he did not pay the loan in full.

Q. Well, is that any reason why he should not be credited on the day it was paid? Is that the only reason you have?

A. Yes, because it couldn't be credited as paid in full.

[fol. 89] Q. And that is the only reason it was not credited on the day he paid it, because he didn't pay the note in full, in your judgment?

(No answer.)

Q. Now as a matter of fact you don't know the exact date that he paid it at all?

A. He paid it to the Association.

Q. Yes; now at any rate the payment was not credited upon that application until April 21st; is that correct?

A. That is correct; yes, sir.

Q. And secondly, any calculations of interest due upon this application which you have testified to relate to the credit appearing on the note on April 21st, and not to the actual date that Mr. Phillips paid it, if he paid it on March 25th, 1933?

A. The penalty interest is figured on the two subsequent payment which haven't yet been made, the two subsequent installments.

Q. No, I ask you about the interest on the entire obligation, which would be represented in the printed figures as well as the penalty interest, so called. Now if Mr. Phillips paid eighteen hundred and some dollars on March 25th, and didn't get credit for it until April 21st, isn't it a fact that this calculation would require him to pay approximately a month's interest on the same debt or money?

A. I don't know.

Q. You don't know anything about that? That is beyond your experience and knowledge as to——

A. I don't know anything about it.

Q. As a man capable of figuring you know that?

A. I don't know whether it would amount to a month or not.

Q. Well, we will takee it from the 25th of March until the 21st of April, and from that we can——

Mr. Fleming: I object to this line of question. That is assuming he has proved that there was a payment made on [fol. 90] March 21st, but there is no such——

The Court: The witness has just answered that he didn't know the payment date; he is reforming his question to meet that.

Q. I was asking about the figures he testified to. He undertakes to testify here how much was due on this note, in chief, and now I am questioning the correctness of his figures, after asking him whether or not it is not a fact that these figures are based upon the receipt of that money on April 21st, and not upon the actual time that it was paid according to Mr. Phillips' claim on March 25th: is that a fact?

A. I couldn't answer that without——

Q. You don't know whether these figures are based upon giving him credit for the payment on the 21st of April or the 25th of March?

A. They are based upon giving him a credit for the payment on the 21st of April.

Q. Well, now, it took you a long time to get that: Now, Mr. Wunderlich, I wish you would tell me, if you can from this document, how much was due thereon on the 25th of March, 1933?

A. (Examining paper.) There was installment No. 55, amounting to $57.58 interest and $114.67 principal. A little explanation, the regular installment is—do you want it separate?

Q. I want you to figure out if you can and tell the court how much was due on the note on the 25th of March, 1933?

A. All right. Installment 55, $172.25. Installment 56, $172.25. Installment 57, on to a—including a——

Q. When was installment No. 57 due?

A. Let's see; July, 1934.

Q. Now interrupting you right there, I can see your process, and I will ask you whether it is true—as I understand it, you are assistant treasurer of this Federal Land Bank?

A. Yes, sir.

Q. Well, now, from your experience and knowledge, as a [fol. 91] man capable of figuring the amount of interest and principal due upon an obligation are you telling this court that the amount due on that note on March 25, 1933—the amount that would be required to satisfy it up to that date, that you should add thereon the installments due through the succeeding years, which you are appearing to do in your testimony—if your interest is calculated clear up to the due date, and are you saying to this court that these borrowers would have been obligated to have paid that future interest upon that loan in order to have paid it off on the 25th of March, 1933?

A. No, I am not pretending to say that at all.

Q. All right. Then I will ask you once more, how much was due on that note March 25th, 1933?

A. There was an amount of principal due of $2093.68, less whatever the partial payments might have been at that particular time.

Q. Two thousand and what?

A. $2098.63.

Q. Less what, did you say?

A. Any partial payments that might have been made for his credit but not yet applied.

Q. Were there any?

A. I don't know, from this record; there may have been.

Q. Yes. And as a matter of fact that sixty some dollars that you refer to in your previous testimony was not entered there until April 21st?

A. That is correct.

Q. Now as a matter of fact do you know whether or not that credit—at least should be as of the same date, whatever may be correct—is of $1837.50?

A. That I cannot say.

Q. They are down there as of the same day, anyway (indicating)?

A. Yes.

Q. Well, now, Mr. Wunderlich, it has been suggested to me by counsel that the point which I am trying to get you [fol. 92] to state here might be subject of an admission, and if counsel will admit that on the date we have referred to of March 25th—well, I have it the 25th—I have the actual date that he paid it as of March 25th——

(Counsel for both sides here confer privately.)

Q. At any rate, Mr. Wunderlich, it is now suggested that counsel will agree that the amount due upon this loan, on March 28th, 1933, was $2121.83. Now, Mr. Wunderlich, that will relieve you from the necessity of answering me.

Bailiff: Do you want it marked as an exhibit? (refers to paper).

Q. Well, I think it might as well be.

(Paper referred to here marked Exhibit E and same hereto attached and made a part of this bill of exceptions.)

Mr. Fleming: It is understood that this is of the date it appears there—March 28th? (referring to Exhibit E).

Mr. Devin: Oh, yes.

(Defendants rest.)

The Court: Do counsel have anything in rebuttal?

Mr. Devin: Why, no, I don't think I have anything in rebuttal.

(And this was all the testimony and evidence offered in the hearing of this case.)

[fol. 93] And thereupon the court found in favor of the plaintiff as more fully appears in the judgment entry filed in this case on November 18, 1935, and within three days thereafter the defendants filed their motion for new trial, which motion with the caption omitted, appears on the succeeding pages hereof. And thereupon, and within three days after said judgment entry, the defendants filed their amended motions for a new trial which motions with the caption omitted appear in the succeeding pages hereof.

Said motion and amended motions for new trial are as follows:

Motion for New Trial

Now come the defendants, The Knox National Farm Loan Association and The Federal Land Bank of Louisville, and move the Court to set aside the finding and judgment heretofore made herein and to grant a new trial for the following reasons:

1. That said Court erred in overruling the defendants' motions requesting the Court to separately state its finding of facts and conclusions of law.

2. That said decision is not sustained by sufficient evidence.

3. That said decision is contrary to law.

4. Irregularity in the proceedings of the Court.

5. Other errors of law occurring at the trial and excepted to by the said defendants.

Vorys, Sater, Seymour and Pease, Paul Flemming, Armond L. Koethen and Charles L. Bermont, Attorneys for the Above Named Defendants.

Amended Motion for New Trial

Now comes the defendant, The Federal Land Bank of Louisville, and moves the Court to vacate and set aside the finding and judgment heretofore rendered herein and to [fol. 94] grant a new trial of this case for the following reasons:

1. Said finding and judgment is not sustained by sufficient evidence.

2. Said finding, judgment and decision is contrary to law.

3. Errors of law occurring at the trial and excepted to by defendant.

4. Irregularity in the proceedings of the Court.

5. The Court erred in overruling defendant's motion requesting the Court to state in writing the conclusions of fact found separately from the conclusions of law.

6. The Court erred in its finding that defendant's motion requesting the Court to state in writing the conclusions of fact found separately from the conclusions of law was filed Nov. 18, 1935, instead of Nov. 13, 1935.

7. The judgment should have been for the defendant instead of the plaintiff.

8. Other errors apparent which were excepted to by said defendant.

Charles L. Bermont, Vorys, Sater, Seymour and Pease, Attorneys for said Defendant.

AMENDED MOTION FOR NEW TRIAL

Now comes the defendant, The Knox National Farm Loan Association, and moves the Court to vacate and set aside the finding and judgment heretofore rendered herein and to grant a new trial of this case for the following reasons:

1. Said finding and judgment is not sustained by sufficient evidence.

2. Said finding, judgment and decision is contrary to law.

3. Errors of law occurring at the trial and excepted to by defendant.

4. Irregularity in the proceedings of the Court.

5. The Court erred in overruling defendant's motion requesting the Court to state in writing the conclusions of fact found separately from the conclusions of law.

6. The court erred in its finding that defendant's motion requesting the Court to state in writing the conclusions of fact found separately from the conclusions of law was filed [fol. 95] Nov. 18, 1935, instead of Nov. 13, 1935.

7. The judgment should have been for the defendant instead of the plaintiff.

8. The Court erred in appointing a receiver for defendant and directing said receiver to take over the assets of defendant.

9. Other errors apparent which were excepted to by said defendant.

Charles L. Belmont, Vorys, Sater, Seymour and Pease, Attorneys for said Defendant.

And thereupon the court overruled said motion for new trial and amended motions for new trial, to which rulings of the court in overruling said motions the defendants at the time separately and severally excepted and still except and on the 6th day of December, A. D. 1935, filed this their Bill of Exceptions in said cause.

And thereupon the Clerk of said court, having forthwith notified the plaintiff of the filing of this bill of exceptions and no objection or amendment to said Bill of Exceptions having been filed by said plaintiff said clerk on the 16th day of December, 1935, presented to Hon. Philip L. Wilkins, trial judge as aforesaid, this Bill of Exceptions for allowance and signature by said court as provided by statute.

ORDER SETTLING BILL OF EXCEPTIONS

And thereupon, the court received this Bill of Exceptions on the 16th day of December, A. D. 1935, and said court did on the 16th day of Dec. A. D. 1935 certify that the foregoing, including the exhibits attached hereto and marked respectively A, B, C, D, E and F and made a part hereof, was all of the evidence offered, introduced and admitted on behalf of the plaintiff and on behalf of the defendants on this trial of this cause and did allow, sign and seal this Bill of Exceptions as provided by statute and did immediately

transmit the same to the office of the clerk of said court to [fol. 96] be made a part of the record herein but not spread at large upon the journal according to the statute in such case made and provided all of which is accordingly done as of said September Term, A. D. 1935, of said court.

Philip L. Wilkins, Trial Judge.

[fol. 97] Exhibits marked respectively "A", "B" ,"C", "D", "E" and "F" attached to and made a part of this Bill of Exceptions.

[fol. 98] EXHIBIT "A"

Number of Shares 53. Certificate No. 93. $265.00

Receipt for Stock Held by Knox National Farm Loan Association

This acknowledges that there has been this date issued to A. C. Phillips a member of Knox National Farm Loan Association of Mt. Vernon, State of Ohio, Certificate No. 93 for 53 shares of Capital Stock of the par value of $5 in the above-named Association.

This stock is issued in connection with the loan of $5300.00 made through this Association, and is in amount 5 per centum of the face of the loan. This stock is being held by this Association pursuant to the provision of the Federal Farm Loan Act as collateral security for the payment of the loan, and can not be legally transferred except to a purchaser of the farm mortgaged.

In Witness Whereof, The Secretary-Treasurer of said Association has hereunto set his signature this 24th day of October, 1937.

E. B. Tucker, Secretary-Treasurer.

Notice to Borrower.—This receipt represents your investment in stock on which dividends will be paid. It will be accepted at face value on final payment of loan. If you sell your land this receipt should be transferred to the purchaser and you should collect not less than face value therefor. It can not be legally transferred to anyone other than the purchaser of the land mortgaged, on account of which this stock is issued.

(Seal.)

[fol. 99] EXHIBIT "B"

Classification Report as of April 23, 1935

The Knox County N. F. L. A., Mt. Vernon City, Ohio State.
Number of loans in Force 179. Amount 493,200.00. Classification* 2A.
Indemnity Agreement Adopted March 21, 1931. Previous Classification 2A.

	Assets			
1	Legal Reserve	710.74		
2	Invested Surplus	445.94		
3	Amount Due from F. L. B.			
4	Profits—Indemnity Agreement			
5	Capital Stock Withheld (—)	335.00	1,491.68	
6	Net Deficit			997.60
7	Total			2,489.28
	Liabilities			
8	Loss on Sale of R. E.—Indemnity Agreement	2,489.28		
9	Money Due to F. L. B.—Indemnity Agreement			
10	Advances from F. L. B.—Indemnity Agreement			
11	Deficiency Judgments		2,489.28	
12	Net Surplus			
13	Total			2,489.28
	Contingent Liabilities			
14	R. E. O. Under Indemnity Agreement	11,074.33		
15	Loans Under Foreclosure	6,743.71		
16	R. E. O. by Association		17,818.04	
17	Estimated Loss on Contingent Liabilities			3,563.61
18	Matured, Unpaid Installments & Advances.			
19	Total Contingent Liabilities			
[fol. 100]				
20	Capital Stock Outstanding		24,660.00	
21	Net Deficit		997.60	
22	Per cent. Impairment of Capital Stock			4.04%
23	Excess-Estimated Loss Contingent Liabilities over Net Surplus			.....

* The proceeds of retired Capital Stock will not be refunded in Class 1 Associations if the estimated loss on Contingent Liabilities exceeds the net surplus at any time.

[fol. 101] Federal Land Bank of Louisville

April 23, 1935

Statement of Investment

Judgments, Sheriff's Certificates and Real Estate Owned under Indemnity Agreement

Loan No.	Name	Investment
18657	J. W. Neighbarger	$4,070.78
18658	J. W. Neighbarger	3,408.55
30452	Jay W. Humbert	3,595.00
		11,074.33

[fol. 102] Federal Land Bank of Louisville

April 23, 1935

Statement of Investment

Loans in Foreclosure

Knox County N. F. L. A. of Ohio

Loan No.	Name	Investment
20958	Nettie M. Sheets	$4,017.63
26351	George R. Shira	2,726.08
		6,743.71

[fol. 103] Federal Land Bank of Louisville

April 23, 1935

Statement of Indemnity Account

Knox County N. F. L. A. of Ohio

15781	John B. Carter, Loss on Sale	$1,999.89
15877–23209	C. W. Ealy, Loss on Sale	157.17
	Accrued Interest to 12/31/34	332.22
		2,489.28

[fol. 104] EXHIBIT "C"

Certificate No. 32174. Certificate of Stock. 53 Shares.

The Federal Land Bank of Louisville

In the Fourth Federal Land Bank District

This is to certify that the Knox National Farm Loan Associatioin of Mt. Vernon, County of Knox and State of O. is the owner of fifty-three shares of stock, of the par value of $5.00 each of The Federal Land Bank of Louisville, in the Fourth Federal Land Bank District, as designated by the Federal Farm Loan Board, situated in the City of Louisville, County of Jefferson, in the State of Kentucky, and organized under the Act of Congress approved July 17, 1916, and known as "The Federal Farm Loan Act."

This Stock is not to be transferred or Typothecated.

The holder hereof is entitled to one vote for each share of stock called for in this Certificate at all meetings of shareholders: Provided, that the maximum number of votes which may be cast by any one shareholder shall be twenty.

In Witness Whereof, The President and Secretary of said The Federal Land Bank of Louisville have hereunto set their names and affixed the corporate seal of said Bank this 29 day of May, 1925.

Samuel B. Jones, President. L. B. Close, Secretary.

[fol. 105] EXHIBIT "D"

First Tract: Being lot number 24 in the first quarter, fifth township, and fifteenth range in the United States Military District, according to a sub-divisional survey of said quarter township made by S. W. Farquhar, esquire, and duly recorded in book P, pages 574-5-6 of the Records of Deeds of Knox County; said lot estimated to contain 93.90 acres.

Second Tract: Lying and being in the County of Knox and State of Ohio and in the first quarter of the fifth township, fifteenth range United States Military Lands situ-

ated in Knox County and the State aforesaid and being taken off the southwest portion of lot 23, commencing at the southwest corner of said lot and running north to the southwest corner of the lot owned by Wm. Jones and wife; thence east to the east line of said lot; thence south to the northeast corner of Samuel Van Sickle's lot; thence west to the northwest corner of said lot; thence south to the southwest corner of said lot; thence west along the south line of said lot twenty-three to the place of beginning containing *for forth-three* acres be the same more or less.

Third Tract: Lying and being in the County of Knox and State of Ohio, to wit: 30 acres of land out of the southeast corner of lot 23, in the Rathbone section so called, being in the first quarter of township 5, range 15, United States Military lands in Knox County, Ohio, and more particularly described as follows:

Beginning at the southeast corner of lot #23; running north on the line between lots 23 and 22, a distance equal to 2/3 the length of said line being 97 1/3 poles; thence west such a distance as to include the said 30 acres by running a line south to the south boundary of lot 23 which said last line is to be run parallel to the said line between lots 23 and 22.

MC.

EACH AND EVERY QUESTION MUST BE ANSWERED PLAINLY AND DEFINITELY.

Application No. 53605	Fee Received Amount $9.50 LAS	Loan No. 32174	Record Amount $5300

DON'T WRITE ABOVE THIS LINE. SPACES ABOVE THIS LINE FOR FEDERAL LAND BANK ONLY.

TREASURY DEPARTMENT
Federal Farm Loan
Bureau.

Form 1321

Examined and approved
Farm Loan Board
H.E.B.

APPLICATION OF

(Marshall B. Roberts)
(Enid V. Roberts) ----- P.O. Centerburg, (Town) Ohio (State)
(Constance Roberts Childs)

Robert F. Childs (Husband's or wife's full name) P.O. Centerburg (Town) Ohio (State)

To The Federal Land Bank of Louisville, Louisville, Kentucky
(hereinafter termed bank)

We, the undersigned, hereby make application through the Knox (Name of National Farm Loan Association) of Mt. Vernon (City or Town) Knox (County) Ohio (State) for a loan of Five Thousand, Three hundred----Dollars ($5300.00) for a term of 34½ years, with interest at the rate of 5½% per cent. per annum, payable semi-annually, or such other rate as may have been established by the Federal Farm Loan Board at the time this loan is closed, said interest rate not to exceed 6 per cent. per annum in any event; the principal and interest to be paid on the amortization plan prescribed by the Federal Farm Loan Board. I also hereby subscribe for the amount of capital stock in said association that this loan will involve under the terms of the Federal Farm Loan Act. For said loan I offer as security a first mortgage on the following described real estate:

A. DESCRIPTION AND LOCATION OF PROPERTY. (Fill in plat or land on back hereof).

	Give Accurate Description Copy from Deed.	Section	Township	Range
1	Lot 24, 1st quarter		5"	15
2	1st "		5"	15
3	30 acres out of S E corner of lot 25		5"	15
4	.....			
5	.....			
6	.....			

(East-West) of principal meridian, containing 166 acres (more or less), situated in the County of Knox State of Ohio, and is 1¼ miles by road north from Centerburg which has a population of 800 and is (nearest railroad shipping point) 1¼ miles from Centerburg ..... and is 1¼ miles from Centerburg (Nearest church) (Nearest school) and on a well-traveled main public road and .....miles from an electric or interurban railway line. If not on main public road, can you show right of way thereto? .....

106

B. STATUS OF APPLICANT.

1. State occupation or business from which your principal income is derived ...Farming.....
2. State place of actual residence..On the place...How many miles from this land? .....
3. Do you farm this land either personally or by means of hired labor to whom you pay a fixed wage?.....Yes
4. If farm is farmed wholly or partially by tenants on either cash, crop, or share rent plan, give names of tenants and general terms of agreement under which they are farming .....
.....
5. State when you intend to move on this land and farm same, either personally or by means of hired labor, to whom you will pay a fixed wage (give date) .....

C. PURPOSE OF LOAN.

To which of the following four purposes, to-wit (A,B,C,D), do you intend and hereby state you will apply the proceeds of this loan? Describe fully and definitely, under the proper heading, the purpose for which proceeds of loan will be used.

Existing debts to be paid must include only those debts described in paragraph E of this application.

PURPOSES.	DESCRIBE FULLY.	AMOUNT.
(A) To purchase..... acres of land.(Give description and terms of purchase.)	To complete purchase of 66 acres of land from heirs	$4500.00
(B) To provide buildings and improvements. (Give size, material, etc.)	....	
(C) To purchase equipment, fertilizer, live stock, etc. (Describe fully and give amount for each purpose.)	....	
	Cost of loan	50.
(D) To pay existing debts (see par. E)		
For what purpose incurred?	Personal note for machinery	500.00

To pay for stock in National Farm Loan Association (5 percent of the amount applied for).....250.00

Total (this must equal the amount herein applied for) $300.00

(Stamp) Federal Farm Loan Board
Statistical Division WNW

State if land proposed to be purchased is to be included in mortgage given to this bank Yes

INDIANA AND OHIO FORM

5. VALUATION OF PROPERTY. The present cash value of the land and permanent improvements is as follows:

Valuation of Permanent Improvements located on the land proposed to be mortgaged.

Name and number of buildings, etc.	Material	Cost.	Present value.	Amount of insurance now carried.
Main dwelling 1			$3000.00	$2500.00
Other dwellings				
Main barn 1			$2000.00	$1500.00
Other barns 1			500.00	300.00
Other outbuildings			500.00	300.00
Silos None			600.00	400.00
....Total				
.....				
300 rods of wire & rail fence			400.00	

Each and every question must be answered plainly and definitely.

Valuation of Land.
(The acreage classified must agree with total acreage offered as security for this loan.)

VALUATION OF LAND.
(The acreage classified must agree with total acreage offered as security for this loan.)

Number of acres.	Classification	Value per acre	Total value.	
70	Cultivated	70.00	$4900.00	
30	Cultivated Cultivable Pasture	50.00	1500.00	
½	Orchard	100.00	50.00	5
55	Timber	50.00	2750.00	3
4⅔	Waste land		100.00	6
6	Bldgs, lots, etc.	100.00	600.00	0
	TOTAL		9900 00	5

Each and every question must be answered plainly and definitely.

E. ENCUMBRANCE AND DEBTS OF APPLICATION.

Include under this heading all encumbrances, mortgages and liens, etc. against the property offered for security - also all amounts due on account of purchase money, notes, or contracts covering purchase of land.

Name of mortgagee or present holder of mortgage	Amount	Date Incurred	Date may be paid	Rate of Interest	Amount of interest past due	State opposite each item if you expect to pay same with proceeds of this loan.
Total $						

If past due interest, why? .....

You are authorized to pay all existing liens out of proceeds of the loan herein applied for.

My other debts and obligations are as follows (state whether debt is secured by mortgage, etc., and property given as security.)

To whom payable.	Amount	Security given for debt	Date incurred	Rate of interest.	State opposite each item if you expect to pay same with proceeds of this loan.
Centerburg Sav'gs Bank	$500.	Personal	2/10/24	7%	Yes.
Total	$				

F. A summary of my live stock and a financial statement of all my resources and liabilities are as follows:

Kind	No.	Price	Value
Horses	2		125.00
Colts			
Milch cows	4		170.00
Beef cows			
Other cattle			
Calves (under 1 yr)	3		60.00
Sheep	90		720.00
Sows	1		10.00
Other hogs	8		50.00
Pigs (under 3 mos)			
Poultry	80		60.00
Total value of live stock			1195.00

FINANCIAL STATEMENT

Value of land to be mortgaged 166 acres @ 54.80 per a.	9100.00
Value of buildings and improvements on land to be mortgaged	7500.00
Value of other land owned by applicant 43 acres @ $60 per a.	2580.00
Total value of all live stock	1195.00
Total value of machinery, wagons and harness	900.00
Total value of all other property, and cash on hand	1200.00
Total resources,	22475.00

Total amount of mortgage on real estate	$ None
Total amount of chattel mortgages	None
Personal notes and other indebtedness	500.00
Total Liabilities,	500.00
Our total net worth (resourses minus liabilities	$21975.00

Are there any outstanding judgments against you? No. If so, how many and to what amount? 20475

I own farming implements valued at $900.00 sufficient to farm...acres

Are implements housed and protected against inclement weather conditions? Yes

If the above live stock and implements are not kept on the land to be mortgaged, state where they are kept. Sheep partly pastured on other place.

G. PRODUCTS OF THE FARM.

During the last cross season the cultivated portion of land herein described was divided and crops grown thereon as follows:

Acres	Crop. Insert name of crop	Yield per acre	Total Yield	Value	Percentage above or below normal yield.
17	Corn (estimated)	About 25 bu	About 425 bu	$425.00	50% belo
17	Clover hay	About 2 ton	About 34 ton	238.00	Average
9	Timothy "	" 1 "	" 9 "	54.00	"
12	Wheat	10 bu	120 bu	120.00	50% belo
15	Oats	40 bu.	600 bu	270.00	35%above
	Clover seed (sec.crop)		7½ bu	112.50	50%below
70				1119.50	
Realized last year from the sale of livestock				302.21	
Realized last year from the sale of dairy products				40.00	
Realized last year from the sale of poultry products				35.65	
Realized last year from the sale of other products				169.79	
Wool consigned no returns (est.$500.00					
Total value of sales and products produced on this farm				1047.65	2167.15

I will cultivate next season 90 acres of this land. Best money crop of this locality Corn.

H. General. 1840

1. How many years has this land been under cultivate? Settled about
2. How many acres are now in cultivation? 70
3. How many acres can be profitably cultivated? 100
4. For what purpose can acreage be used that is not subject to profitable cultivation? Timber and Pasture.
5. Number of dependable wells on land? 3
6. Acres fenced? All. Kind of fence? Wire & Rail
7. How many acres need ditching or draining? Few spots.
8. How many rods of open ditch on land? About 150 rds.
9. How many acres subject to overflow? None.
10. Is land located within bonded or other drainage district? No.
11. If so, what is the total drainage assessment against this land?
12. Has the drainage project been a success?
13. Do you own both surface and mineral underlying this farm? Yes
14. If there is coal under you land, what is the approximate depth to the first vein? Do no know of any.
15. Is there an existing lease affecting coal or other minerals under this farm? No.

I acquired and came (or excent to acuire and come) into possession of this oroperty in the following manner:

Date acquired	Acres	Purchased or acquired from	If land was purchased from a relative, state relationship.
7/21/23	100	Inheritance	Great Uncle
5/15/24	66	Other heirs	

$450[illegible].00 to be paid in cash and the balance to be paid out of the Estate, which is not as yet completely settled.

Total purchase price $5040.00

Which was settled for as follows:

Cash payment .....

Mortgage or contract .....

Trade Valued at $200. described as follows: Fence.

Each andevery question must be answered plainly and definitely.

H. GENERAL (Continued)

United States Converted ins....Childs $1000.
We carry life insurance Missouri State Life (St.Louis,Mo.) 1000.
Give name and address of any person to whom you have paid or agreed to pay a fee or commission for obtaining this loan. None.
Have you ever applied to a Federal Land Bank or a Joint Stock Land Bank for a loan on this property? No.
If so, give name of bank, date, amount, and reason why loan not completed.....
Have you ever been or are you now indebted to any Federal Land Bank for a farm loan? No. Did you assume theindebtedness because of purchase of land already mortgaged to a Federal Land Bank, or did you obtain the loan by applying through a National Farm Loan Association? Give particulars .....
Has application for a Federal loan by you on any of this or on any other land been withdrawn? No.
If so, give particulars.....
Was your application for loan ever rejected by any National Farm Loan Association or Federal Land Bank? State name and reasons for rejections. No.
Was a loan ever refused by this Land Bank on the land (or any part thereof) covered by this application? No. Date.....
Why? .....
Assessed value of this land for taxation was $10,180.00. Amount of last year's taxes paid $174.96.
Amount of delinquent taxes? None. I own 40 acres or other land value at $2580.00 located in Knox County, State, Ohio, against which are encumbrances not listed
listed in paragraph E amounting to $ None
I am a native of and a citizen of the United States, married single aged Mrs. Childs; wife's age....wife's name... have children, namely ... boys.....girls..,of which... boys aged.....and .....girls aged.....are now living at home on this land.
What date is money desired? As soon as possible
Make amortization payments due the first day of January and the first day of July of each year.

For the purpose of procuring this loan, I have submitted this application to the bank and hereby represent and guarantee that the statements contained herein are true and correct and that I have suppressed no information about the property described which would adversely affect its value. I further represent and guarantee that no suits are pending or judgments unsatisfied against me in any court of record of this State or the United States and that there are no imcumbrances or liens against the property described except as are herein described. I agree to maintain and assign to the bank insurance on permanent insurable improvements to the amount required by the bank. I further represent that I am in open and peaceful possession of the premises described and that my title thereto is not questioned nor do I know of any claims that might give rise to adverse claim of my possession. If this application is accepted and a loan granted hereon by the bank, I agree to furnish at my expense, within fifteen (15) days from the date of receipt of notice of approval of this loan, abstract of title, acceptable in form to the bank, that will show the title perfect in me and the mortgage given the bank a first lien on theproperty described. I agree to pay all fees for recording and releasing instruments necessary to complete the loan. If this loan be completed by the bank, or if this application is withdrawn or cancelled, or the

loan not completed through any action on or of my part, I agree to pay the bank reasonable fee assessed in accordance with rules and terms promulgated by it and approved by the Federal Farm Loan Board for expenses (appraisal, determination of title, etc.) incurred in connection with this application. I further agree to pay to the association through which this application has been filed reasonable charges in order to meet the necessary expenses of the association, provided that such charges shall not exceed amounts to be fixed by the Federal Farm Loan Board, and shall in no case exceed 1 per centum of the amount of the loan. It is understood and agreed that the association charges do not include fees for recording, etc.

If the title to this land is held jointly, authority is hereby given Marshall B. Roberts to become a membe of this association, and to act for and on behalf of the other joint owner or joint owners.

Dated Nov. 5, 1924. (Sign here) Constance Roberts Childs
Enid M. Roberts.
Witness John Cunningham Marshall B. Roberts.

If the title is held by two or more joint owners, all joint owners must sign application.

(Confidential)

REPORT OF THE LOAN COMMITTEE TO THE FEDERAL LAND BANK OF LOUISVILLE

Note: Section 10 of the Farm Loan Act, as amended, provides that the loan committee may designate someone to make an investigation of the security and the application in its behalf, or the committee itself may make the investigation. The result of the investigation must be approved and the report signed by every member of the loan committee

1st. The land on which this report is based is the identical property described in this application and signed by the applicant.
2nd. The farm offered as security is in a good location.
3rd. The soil is (describe kind) black loam of good quality, adapted to the growing of the following commercial crops corn, oats, wheat, hay, etc.
4th. 150 acres can be profitably cultivated, and 16 acres remaining are suitable for pasture.

VALUATION OF PERMANENT IMPROVEMENTS. Located on premises described herein.

Insurable buildings		Non-insurable buildings.
House	$3000.--	
Barn	2000.	
Other buildings	1000.	
Total	5000.00	

VALUATION OF LAND.
(The acreage classified must agree with total acreage offered as security for this loan.)

No. of acres	Classification	Value per acr	Total Value.
70	Cultivated	70	$4900.
30	Cultivated	50	1500.
	Cultivable Orchard		
55	Timber		2750.
	Waste land		
11	Bldg etc		750
			9900.

Fencing 800 rods, value $400.

5th. In our judgment, the present sale price of the property is $16000.

6th. The applicant is a person of good character and habits and is prompt in meeting obligations.

7th The applicant, by virtue of actual farming experience, training, and temperament, is qualified and capable of making a success in the operation of this farm.

8th. This farm, in our judgment, under the management of the applicant will produce a sufficient revenue to sustain the family of the applicaiont and enable him to meet amortization payments as they become due.

9th. The crop yield, as reported by the applicant, was 100% of the average yield in this section. If above or below normal, give the reasons. Past season wet & cold, dry at later end. Whole country way below normal.

10th. The applicant is in good health; belongs to the white race.

11th. Give any furtner information you have bearing on this loan. Applicant inherited this along with other heirs. Object of loan to buy out all heirs but these three, who now have title to the

12th. Will the applicant accept the loan as recommended? Yes property.

Based upon the investigation of the property, its earning power under normal conditions, the solvency, character and qualifications of the applicant, I recommend that a loan be granted for an amount not to exceed $7950.

The foregoing is a report of an investigation made the 5th day of Nov. 1924.

John Cunningham,
Investigator for Loan Committee.

We, the Loan Committee, of the Know National Farm Loan Association, have carefully considered this application and the report of our Investigator, or have personally invested the security, and recommend that a loan be granted for an amount not to exceed $7950.

Now member of this committee nor any person who made the investigation is interested, directly or indirectly, in the loan sought by the within named applicant.

Dated at Mt. Vernon Ohio
8th day of Nov. 1924.
L. R. Kempton,
Secretary-Treasurer.

(This report MUST be signed by. all members of the Loan Committee.
John Cunningham
H. V. Fleming,
Austin Carpenter.

ACTION OF THE BOARD OF DIRECTORS.

The undersigned, Secretary-Treasurer of the within and above named National Farm Loan Association, hereby certifies that the Board of Directors of said association by a favorable vote of a majority of the entire directorate, at the casting of which vote no interested director participated in any manner, has approved and recommended to the Federal Land Bank of Louisville a loan not exceeding $7950. to the within-named applicant on the land offered in said application, and I further certify that said applicant is a charter member of or has been admitted to membership in said association by a two-thirds, or more, vote of the Board of Directors.

Witness my official signature the 29th day of November, 1924.
L. R. Kempton,
Secretary-Treasurer.

FOR USE FEDERAL LAND BANK ONLY.

Action of Executive Committee.
Approved (date)
1-10-25 For $5,300.
subject to the following conditions:

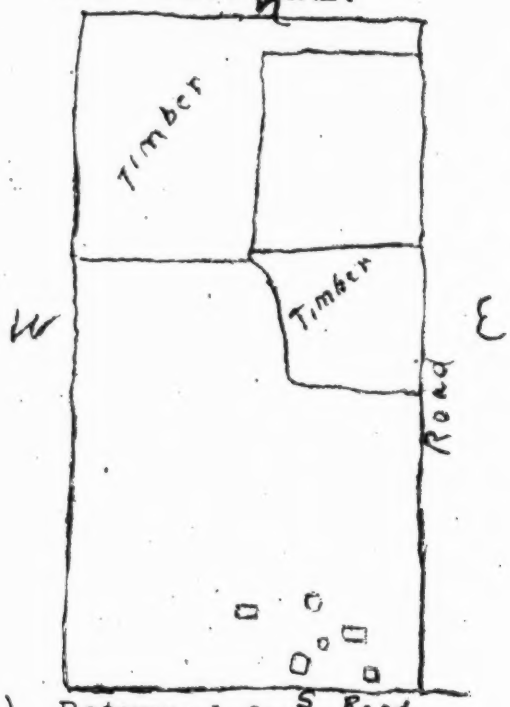
Insurance required 2500

NBC KTM

Executive Committee.

This bank holds an insurance policy in the amount of $5800. in connection with this loan E.L.Morgan.

DRAW PLAT HERE.



(Stamp) Sent to
Dec 4 1924
Appraiser.

(Stamp) Returned from
Jan 6 1925
Appraiser.

[fol. 116] EXHIBIT "E"

The Federal Land Bank of Louisville

Loan No. 32174

A. C. Phillips, Borrower

Amount of Loan		$5,300.00
Addl.	2,395.26	
Credit by payment on principal Reg.	811.06	3,206.32
Balance of Loan		2,093.68
Accrued interest from Jan. 1, 1933 to Mar. 28, 1933		28.15
Compromise Fee		
Balance Due		2,121.83

Date. 3/28/33. N. F. L. A., Knox, Ohio, C. F.

All Funds in payment of this loan must be sent direct to this bank.

[fol. 117] EXHIBIT "F"

Indemnity Agreement

This Agreement, made this 21 day of March 1931, between Knox National Farm Loan Association, of Mt. Vernon hereinafter referred to as the Association, and The Federal Land Bank of Louisville, of Louisville, Kentucky, hereinafter referred to as the Bank, Witnesseth:

Whereas, The Association, under the provisions of the Federal Farm Loan Act and the Association's action pursuant thereto, has or may become liable for the payment of obligations represented by notes and/or mortgages, security deeds, or deeds of trust, hereinafter collectively called "Mortgage(s)" which have been accepted from its members to secure loans made to them by the Bank; and

Whereas, in the event of a default under the provisions of any of such Mortgages the Bank may require payment by the Association under the provisions of the Act, without resorting to foreclosure; and

Whereas, defaults have occurred or may occur in the payment of such Mortgages and by reason thereof it has been or may become expedient or necessary, from time to time, for the Bank to foreclose Mortgages and or to acquire title to some or all of the properties covered by such Mortgages, in order to protect the interests of the Bank and the Association therein, or to charge off the whole or portions of the amounts of its investment in such Mortgages or properties acquired thereunder; and

Whereas, such titles may be acquired by deed, or by purchase at foreclosure sale, for amounts equal to the amounts of indebtedness respectively covered by such Mortgages, or for lesser amounts, in the discretion of the Bank; and

Whereas, the Association desires to indemnify and reim- [fol. 118] burse the Bank for the actual loss, if any, suffered by it in connection with each such Mortgage, and desires that the Bank defer the determination of the amount due it by the Association in any such case, together with the immediate full enforcement of its liability therefor, until such property as the Bank has acquired or shall have ac- [fol. 119] quired in the manner stated herein is disposed of by it; and

Whereas, the Association desires to have offset against determined losses, which may have been or which may be sustained by the Bank on account of any such Mortgages, the net profits that may be realized from the disposition of any property acquired as herein stated, or from the salvage effected in connection with any charged-off Mortgage, so that the ultimate liability of the Association for such losses, if any, may be reduced,

Now, therefore, It is expressly understood and agreed by and between the parties hereto, in consideration of the premises and of the mutual benefits to follow the performance of this Agreement, as follows:

I

Whenever the Bank has acquired or may acquire by purchase at foreclosure sale or by deed from the owner (including the Association), the title to land covered by any Mortgage, or has acquired or may acquire at the foreclosure of any mortgage a sheriff's certificate, master's deed, or other evidence of rights by reason of such foreclosure (except as limited in paragraph VI hereof), the Association's lia-

bility for the debt is and shall be in all respects and to the same extent as if the Bank had not taken such action, whether or not the consideration therefor was equal to, or less than, the amount of the Bank's investment in such Mortgage.

II

For the purpose of securing the performance of this agreement, all or any portion of dividents which may be declared upon the Bank's stock recorded in the name of the Association, any net profit realized from lands acquired in connection with Mortgages, payments on any judgments, any salvage effected in connection with any charged-off Mortgage, and any sums, including the proceeds of retired [fol. 120] stock, which might otherwise be payable by the Bank to the Association, may to the extent deemed necessary by the Bank, be retained by it as a Real Estate Indemnity Account, against which account shall be charged the actual losses, if any, sustained by the Bank on account of the operation, maintenance or disposition (including abandonment) of any such lands, or the disposition of any [fol. 121] sheriff's certificate, master's deed or other evidence of rights acquired by the foreclosure of any mortgage, when such losses are ascertained, together with the amount of the Bank's investment in any Mortgage charged off in whole or in part by the Bank, in its sole discretion, or as required by the instructions of the Federal Farm Loan Board. Upon any amounts so retained, the Bank shall allow interest for the actual period during which such amounts are retained until applied to the reimbursement of the Bank for such losses, or until paid over to the association or applied upon any other obligation of such association, at a rate to be fixed by the bank at least equal to the rate of interest borne by the last issue of the bonds of the Bank. When any acquired land is abandoned, or when any mortgage is charged off by the Bank in whole or in part, any balance of the Bank's investment therein, not already charged against the Real Estate Indemnity Account, may be charged forthwith against said Account. When the Bank shall finally abandon any acquired land as having no saleabel value, or when any mortgage is charged off in whole or in part by the bank, it shall notify the Association in writing of such action. A statement of this ac-

count shall be sent to the Association annually, beginning as of January next.

III

Unless by written agreement between the parties hereto the same is waived or postponed, a settlement shall be made and had between the parties at any time when there are no pending foreclosures of such Mortgages, no such acquired lands unsold, and no other unpaid matured liabilities of the Association to the Bank, or upon the institution of any judicial proceedings which might otherwise prejudice the rights of the Bank as a creditor of the Association, [fol. 122] and in any event on January 1, 1935, and on January 1 of each year thereafter. Such settlement shall constitute an account stated between the parties as to all items included therein.

If the balance of said account shall be in favor of the Association, it shall, if there are no other matured obligations of the Association, no pending foreclosures of Mortgages and no undisposed of properties acquired by the Bank in connection with Mortgages, be paid forthwith to [fol. 123] the Association to the extent necessary to reimburse the association for all matured losses sustained by it in connection with all Mortgages coming within the operation of this Agreement, and for proceeds of retired stock retained by the Bank in said account as provided in paragraph II of this Agreement. Any remaining credit balance shall stand for a period of two years after such casting of accounts as a credit to said Real Estate Indemnity Account against which liabilities when matured, shall be charged as herein provided. Credits in favor of the Association in the Real Estate Indemnity Account shall be applied to the payment of matured liabilities of the Association to the Bank in the chronological order in which such liabilities arose, it being also the intention of the parties hereto that the credits to said Real Estate Indemnity Account shall be used for the purposes herein stated in the chronological order in which they are made. Any privilege of the Association to have any portion of such credit balance applied upon any liability shall cease at the expiration of said two year period.

If such credit balance shall be in favor of the Association and there are pending foreclosures of mortgages or undisposed of properties acquired by the Bank in connection

with such mortgages, such balance, if any, may be retained by the Bank to the extent which it may deem advisable, as a credit against which liabilities of the Association, when matured, may be charged as provided in paragraph II hereof.

If the balance of said account be in favor of the Bank, the Association shall pay such balance forthwith to the Bank unless the latter shall agree in writing to extend for a definite period the time for the payment of said balance.

In computing matured losses chargeable against, and/or [fol. 124] credits to, the Real Estate Indemnity Account in connection with any acquired real estate, sheriff's certificate, master's deed or other evidence of any rights acquired by the foreclosure of any mortgage, which has been disposed of by the Bank, such losses and/or credits, if any, shall not, except at the option of the Bank, expressed in writing, be computed as to any such transaction until the Bank had received full payment of the consideration specified in any contract of sale or exchange thereof.

The account settlements herein provided shall not terminate this Agreement, which shall continue in full force and effect so long as the Bank is the Mortgagee under any Mortgage or retains title to any land acquired in connection [fol. 125] with any such Mortgage; Provided; That on or after January 1, 1935, whenever there are no pending foreclosures, no acquired lands unsold and no other matured unpaid obligations to the Bank by the Association, either party may terminate this Agreement by gaving written notice to the other party, and in the event of the cancellation of this Agreement by the Association, any privilege of the Association to have any portion of any credit balance in the Real Estate Indemnity Account applied upon any liability shall cease.

IV

The Bank shall have the right to sell or exchange acquired real estate, sheriff's certificates, master's deeds, or other evidence of rights acquired by the foreclosure of any mortgage, and to compromise any liability to the Bank, at such time and price and upon such terms as it may in its judgment and discretion deem proper, without releasing the association from its liability for the remainder of the indebtedness.

V

The Bank shall have the right, in its discretion, to take a judgment or judgments against any and all persons or corporations who may be liable in connection with any mortgage coming within the scope of this Agreement, with the understanding that the taking of such judgment or judgments shall not alter or affect the operation of this Agreement with respect to such mortgage, and that any such judgment against the Association shall not be enforced against it in any manner inconsistent with the operation of this agreement.

VI

It is expressly understood that the provisions of this agreement shall not apply to any Mortgages which the Bank has, at the time of the execution hereof, already foreclosed and/or in connection with which the Bank has al- [fol. 126] ready acquired the title to properties, except to the extent that the Bank has, in any such instance, legally preserved or obtained for itself (by valid agreement, judgment or otherwise) the right to enforce a deficiency claim against the Association in connection with such Mortgages; it being the intention of the parties hereto that the liability of the Association and that of its individual members shall not in any manner be increased hereby beyond the liability imposed by the provisions of the Federal Farm Loan [fol. 127] Act; and that legally valid existing deficiency claims may be charged against the Real Estate Indemnity Account in the same manner as other ascertained losses for which the Association is liable under this Agreement or otherwise.

In Witness Whereof, the parties hereto have executed this Agreement in duplicate this 21 day of March, 1931.

The Federal Land Bank of Louisville, by A. L. Brown, President, Knox National Farm Loan Association of Mt. Vernon, Knox Co., Ohio, by John Cunningham, President, E. B. Tucker, Secretary-Treasurer.

Attest: Ralph G. Sams.

Resolution of Directors

"Resolved: That the President and the Secretary-Treasurer be, and they hereby are, authorized to execute on behalf of this Association the above and foregoing Indemnity Agreement."

Certificate of Secretary-Treasurer

The undersigned hereby certifies that the foregoing resolution was duly adopted by the Board of Directors of the Knox National Farm Loan Association of Mt. Vernon on the 21 day of March, 1931; and that the above Agreement was duly executed pursuant thereto.

E. B. Tucker, Secretary-Treasurer of Knox National Farm Loan Association.

[fol. 128] [File endorsements, omitted.]

[fol. 129] In Court of Common Pleas of Knox County

No. 15070

Arthur C. Phillips, Plaintiff,

vs.

The Knox National Farm Loan Association et al., Defendants

Judgment—Filed October 7, 1935.

This day this cause came on to be heard upon the Petition of the plaintiff, the Answer and Cross Petition of the defendant The Federal Land Bank of Louisville, the Answer of the defendant The Knox National Farm Loan Association, the Reply of the plaintiff to the Answer of said defendant The Federal Land Bank of Louisville, the Answer of plaintiff to the Cross Petition of the defendant The Federal Land Bank of Louisville, the Reply of plaintiff to the Answer of the defendant The Knox National Farm Loan Association, and the evidence; and was argued by counsel.

Upon the issues joined by the Petition of plaintiff, the Answer of said defendant The Federal Land Bank of

Louisville, and plaintiff's Reply thereto, and upon the Cross Petition of said The Federal Land Bank of Louisville, and plaintiff's Answer thereto, the Court find that on March 25, 1933, plaintiff paid to said defendant The Federal Land Bank of Louisville, the full amount of the indebtedness he then owed upon the claim secured by the mortgage mentioned and described in said pleadings except the sum of $265.00, and that at said time, said sum of $265.00 was tendered by plaintiff to said defendant, The Federal Land Bank of Louisville, and that said tender was again made by the plaintiff to said defendant in open court at the time of the opening of the trial of this cause, and that said tenders were each refused by said defendant.

[fol. 130] The Court further find that by reason of the tenders aforesaid that upon the payment of said sum of $265.00 said plaintiff is entitled to the surrender by said defendant The Federal Land Bank in Louisville, of the promissory note mentioned and described in its said Cross Petition, and the cancellation and surrender to said plaintiff of the mortgage securing said note also mentioned and described in said Cross Petition.

It is therefore ordered that if said plaintiff deposits with the Clerk of this Court on or before October 1st, 1935, said sum of $265.00 in cash, that then and thereupon said sum so deposited be paid to said defendant The Federal Land Bank of Louisville, in full satisfaction of its claim mentioned and described in its said Cross Petition, and furthermore upon said defendant The Federal Land Bank of Louisville placing in the hands of said Clerk for delivery to said plaintiff said note hereinabove mentioned, duly cancelled, and said mortgage hereinabove mentioned, duly cancelled and released.

It is further ordered that upon default of said defendant The Federal Land Bank of Louisville to accept said sum of $265.00 and place said cancelled note and released mortgage in the hands of said Clerk for surrender to said plaintiff within fifteen (15) days from the time of the deposit by said plaintiff of said sum with said Clerk, that then and thereupon, it is ordered, adjudged, and decreed that the title and possession of said plaintiff Arthur C. Phillips to all and singular the premises as mentioned and described in said Petition and Cross Petition be, and the same hereby are, quieted as against the defendants and each and every

one of them, and all persons claiming under them or any of them; and the said note and the mortgage securing same, as mentioned and described in the said Cross Petition of said defendant, The Federal Land Bank of Louisville, shall [fol. 131] be, and hereby is, cancelled and released, and said mortgage lien cancelled of record by the order, judgment and decree of this Court. It is further ordered that said defendants be, and hereby are, forever enjoined from setting up any claim to said premises, or any part thereof, adverse to the title and possession of said plaintiff, Arthur C. Phillips, his heirs or assigns thereto. It is further ordered, adjudged and decreed that the costs of this action, taxed at $— be paid by said defendant, The Federal Land Bank of Louisville, for which amount judgment is rendered against said defendant.

Upon the issues joined by the Petition of the plaintiff, the Answer of the defendant The Knox National Farm Loan Association, and plaintiff's Reply thereto, and the prayer of said Petition for relief in respect to said defendant The Knox National Farm Loan Association and the appointment by this Court of a Receiver to take charge of its assets and proceed to a liquidation of its assets, it is ordered that this cause be, and hereby is, continued for further orders, judgments and decrees by said Court in respect to said issues.

To all of which judgments, orders and decrees, the said plaintiff, by his counsel, and each of said defendants, said The Federal Land Bank of Louisville, and said The Knox National Farm Loan Association, by their several counsel, except, and thereupon each of said parties gave notice of intention to appeal this cause to the Court of Appeals, and upon application the Court fixes the amount of appeal bond to be given by any such party desiring to appeal said cause at the sum of $200.

Philip L. Wilkins.

Approved: Henry C. Devin, Atty. for Judge of said Court, Pltf. Armand L. Koethen, Atty. for Federal Land Bank of Louisville.

[fol. 132] In Court of Common Pleas of Knox County

[Title omitted]

Request to Separately State Conclusions of Fact From Conclusions of Law Filed November 18, 1935

Now comes defendant, The Federal Land Bank of Louisville, and with a view to excepting to the court's decision on questions of law involved in the trial, requests that the court shall state in writing the conclusions of fact found separately from the conclusions of law.

Charles L. Bermont, Armand L. Koethen, Vorys, Sater, Seymour and Pease, Attorneys for Defendant, The Federal Land Bank of Louisville.

This requests heard and overruled this 18 day of November, 1935.

Philip L. Wilkins, Judge.

[fol. 133] In Court of Common Pleas of Knox County

[Title omitted]

Request to Separately State Conclusions of Fact From Conclusions of Law Filed November 18, 1935

Now comes the defendant, The Knox National Farm Loan Association, and with a view to excepting to the court's decision on questions of law involved in the trial, requests that the court shall state in writing the conclusions of fact found separately from the conclusions of law.

Charles L. Bermont, Armand L. Koethen, Vorys, Sater, Seymour and Pease, Attorneys for Defendant, The Knox National Farm Loan Association.

This request heard and overruled this 18 day of November, 1935.

Philip L. Wilkins, Judge.

[fol. 134] IN COURT OF COMMON PLEAS OF KNOX COUNTY

[Title omitted]

ORDER OVERRULING REQUESTS FOR SEPARATE CONCLUSIONS OF FACT—Filed November 18, 1935

This day came on to be heard the separate and identical Motions of the defendant, The Federal Land Bank of Louisville, and the defendant, The Knox National Farm Loan Association, requesting the Court to state in writing its conclusions of fact found separately from its conclusions of law; and the Court finding that said Motions were not filed until November 18, 1935, after the trial of said cause, and after the Court's decision thereof, find that said Motions, and each of them, are not well taken, and do overrule each of said Motions.

To all of which findings and rulings the said defendants, and each of them, do, by their counsel, except.

Philip L. Wilkins, Judge.

[fol. 135] IN COURT OF COMMON PLEAS OF KNOX COUNTY

[Title omitted]

ORDER APPOINTING RECEIVER—Filed November 18, 1935

This day this cause came on further to be heard upon the pleadings and the evidence, and the Court being fully advised in the premises find upon the issues joined by the Petition, the Answer of the defendant, The Knox National Farm Loan Association and the Reply of the plaintiff to said Answer, in favor of said plaintiff; and further that said plaintiff has fully and finally paid the entire debt mentioned in said Petition and in the Cross Petition of the defendant, The Federal land Bank of Louisville, and secured by the mortgage mentioned therein, and that thereupon, and by reason thereof, said plaintiff is entitled to the retirement and repayment of his 53 shares of the capital stock of said Knox National Farm Loan Association at the par value of $5.00 per share, aggregating the sum of $265.00, which said amount of $265.00 said plaintiff is entitled to recover from said defendant, The Knox National Farm Loan Association, and that said amount is due to

said plaintiff from said Knox National Farm Loan Association.

It is therefore ordered, adjudged and decreed that said plaintiff, Arthur C. Phillips, recover from said defendant, The Knox National Farm Loan Association said amount of $265.00, with interest thereon from the date hereof at the rate of 6% per annum.

It is further ordered, adjudged and decreed that upon payment to said plaintiff by said defendant, The Knox [fol. 136] National Farm Loan Association of said sum of $265.00, together with interest thereon as hereinabove set forth, that then and thereupon the said shares of stock of said plaintiff in said The Knox National Farm Loan Association be thereupon retired and cancelled and of no more effect.

The Court further finds that said The Knox National Farm Loan Association is a corporation organized and existing under the laws of the United States of America, known as the "Federal Farm Loan Act", and that plaintiff is a stockholder therein and is liable by law to be subjected to an assessment upon his holdings of stock in said corporation for the raising of funds to pay and satisfy certain of the debts and liabilities of said defendant, The Knox National Farm Loan Association. The Court further finds that said defendant, The Knox National Farm Loan Association is now insolvent and that it has been insolvent for and during the entire time since March 25, 1933, at which time the plaintiff tendered to the defendants in this case the full amount due upon the debt hereinabove mentioned, and made demand and request upon the defendants for the retirement and repayment to him at par value of his said 53 shares of the capital stock of said defendant The Knox National Farm Loan Association, which was then and there refused by said defendants and by said act said plaintiff has been obliged to continue since said date as a stockholder of said defendant The Knox National Farm Loan Association against his will and desire. The Court further finds that since March 25, 1933, said defendant The Knox National Farm Loan Association has been continuously engaged in the business of making new and further loans to new borrowers for and on behalf of the defendant The Federal Land Bank of Louisville, for which new loans said Association has made itself contingently

liable and responsible to the payee, and that said new loans made since March 25, 1933, and up to the time of the com-
[fol. 137] mencement of this action have aggregated in amount more than $100,000.00. The Court further find that said plaintiff, by reason of the facts herein found and the judgment herein rendered, is entitled to the liquidation of the business and affairs of said defendant, The Knox National Farm Loan Association.

Thereupon, upon Motion of said plaintiff and upon the evidence adduced, and after argument by counsel, the Court find that proper notice having been given to the defendants and that it is necessary and proper that a Receiver be appointed in accordance with the prayer of the Petition herein, and that the appointment of a Receiver will best protect the property and assets of said defendant, The Knox National Farm Loan Association, and be for the best interests of the parties hereto, and for the best interests of the creditors and stockholders of said defendant, The Knox National Farm Loan Association.

It is Therefore Ordered, Adjudged and Decreed, That Harry W. Koons, a citizen and resident of said County, be, and hereby is, appointed Receiver under the direction and authority of this Court of all and sig*n*ular the property, assets, rights and interests of said defendant, The Knox National Farm Loan Association, of whatsoever kind and wheresoever situate, together with all of its books of accounts, records, papers, contracts, choses in action, securities and cash on hand, together with deeds, leases, bills and accounts receivable and assets of every kind. And said Receiver is hereby authorized to immediately take possession of any and all property, and to use, manage and conduct the business and affairs of said defendant, The Knox National Farm Loan Association, in accordance with his best judgment and discretion, and the orders of this Court, and so as to preserve and protect the assets and property of said Association and prevent waste thereof and prevent
[fol. 138] increases and additions to its liabilities and contingent liabilities. And in accordance with his discretion, to appoint, employ, discharge and fix the compensation of such Agents, and employees, and attorneys as he may find reasonably necessary and proper in the operation and carrying on of his duties as such Receiver. And furthermore, to make payments and disbursements from moneys

on hand or received belonging to said defendant Association as may be proper and reasonably necessary in carrying out this order. It is further ordered that said Receiver be, and hereby is, authorized and empowered to institute and prosecute any suits or legal actions that may be necessary or proper in his judgment for the protection of the property and Trust hereby vested in him, and likewise to defend any and all such actions as may be necessary for the protection of the property rights and interests herein placed in the charge of said Receiver.

It is further ordered that within ten days said Receiver cause to be filed in this Court an application for the appointment of three disinterested persons who shall, under oath, truly inventory and appraise all of the property, real and personal of said defendant Association, and thereafter make return of said appraisal to this Court within sixty days from the date of their appointment. It is further ordered that said Receiver proceed to liquidate said defendant corporation, The Knox National Farm Loan Association, by collecting and realizing upon its assets, and by payment of its true debts and obligations, including the judgment of plaintiff herein, and make due report of his proceedings hereunder to this Court.

It is further ordered that said Receiver open and keep books of account, entering therein receipts and disbursements pertaining to the Trust herein created and established.

It is further ordered that said Receiver give bond in the [fol. 139] sum of $—, conditioned that he will well and truly perform the duties of his office and duly account for all money and property that may come into his hands, and conform to, and perform, all things which he may be directed to do by this Court, and that said bond shall be with a surety or sureties to the satisfaction of the Clerk of this Court, and filed in the office of said Clerk.

It is further ordered that officers, directors, agents and employees of said defendant, The Knox National Farm Loan Association, and all other persons be, and they are hereby required forthwith upon the demand of said Receiver or his duly authorized agent, to turn over and deliver to said Receiver, or to his agent, any and all property belonging to said defendant corporation of any kind and description in his, its, or their, hands or control, and

each of said officers, directors, agents and employees are hereby enjoined and restrained from interfering in any manner whatsoever with the possession, control or management of any part of said property by said Receiver, or from interfering in any way to prevent the discharge of his duties as such.

It is further ordered that said Receiver be, and hereby is, authorized and directed, until the further order of this Court, to deposit any funds that may come into his hands belonging to said Trust in The Knox National Bank in Mt. Vernon.

It is further ordered that any party in interest may apply to this Court for further directions in reference to the property and business of said defendant, The Knox National Farm Loan Association as aforesaid, and that the Court reserves the right to make any other orders in respect to the Receivership herein established and to control the conduct of said Receiver and to rescind or modify this order.

To all of which, including the appointment of the Re- [fol. 140] ceiver as herein set forth, said defendants, and each of them do except.

Philip L. Wilkins, Judge.

[fol. 141] In Court of Common Pleas of Knox County

[Title omitted]

Motion for New Trial—Filed November 19, 1935

Now come the defendants, The Knox National Farm Loan Association and The Federal Land Bank of Louisville, and move the Court to set aside the finding and judgment heretofore made herein and to grant a new trial for the following reasons:

1. That said Court erred in overruling the defendants' motions requesting the Court to separately state its finding of facts and conclusions of law.

2. That said decision is not sustained by sufficient evidence.

3. That said decision is contrary to law.

4. Irregularity in the proceedings of the Court.

5. Other errors of law occurring at the trial and excepted to by the said defendants.

Vorys, Sater, Seymour and Pease, Paul Flemming, Armond L. Koethen and Charles L. Bermont, Attorneys for the above named defendants.

[fol. 142] In Court of Common Pleas of Knox County

[Title omitted]

Amended Motion for New Trial—Filed November 21, 1935

Now comes the defendant, The Federal Land Bank of Louisville, and moves the Court to vate and set aside the finding and judgment heretofore rendered herein and to grant a new trial of this case for the following reasons:

1. Said finding and judgment is not sustained by sufficient evidence.

2. Said finding, judgment and decision is contrary to law.

3. Errors of law occurring at the trial and excepted to by defendant.

4. Irregularity in the proceedings of the Court.

5. The Court erred in overruling defendant's motion requesting the Court to state in writing the conclusions of fact found separately from the conclusions of law.

6. The Court erred in its finding that defendant's motion requesting the Court to state in writing the conclusions of fact found separately from the conclusions of law was filed Nov. 18, 1935, instead of Nov. 13, 1935.

7. The judgment should have been for the defendant instead of the plaintiff.

8. Other errors apparent which were excepted to by said defendant.

Charles L. Bermont, Vorys, Sater, Seymour and Pease, Attorneys for Said Defendant.

[fol. 143] In Court of Common Pleas of Knox County

[Title omitted]

Amended Motion for New Trial—Filed November 21, 1935

Now comes the defendant, The Knox National Farm Loan Association, and moves the Court to vacate and set aside the finding and judgment heretofore rendered herein and to grant a new trial of this case for the following reasons:

1. Said finding and judgment is not sustained by sufficient evidence.

2. Said finding, judgment and decision is contrary to law.

3. Errors of law occurring at the trial and excepted to by defendant.

4. Irregularity in the proceedings of the Court.

5. The Court erred in overruling defendant's motion requesting the Court to state in writing the conclusions of fact found separately from the conclusions of law.

6. The Court erred in its finding that defendant's motion requesting the Court to state in writing the conclusions of fact found separately from the conclusions of law was filed Nov. 18, 1935, instead of Nov. 13, 1935.

7. The judgment should have been for the defendant instead of the plaintiff.

8. The Court erred in appointing a receiver for defendant and directing said receiver to take over the assets of defendant.

9. Other errors apparent which were excepted to by said defendant.

Charles L. Bermont, Vorys, Sater, Seymour and Peace, Attorneys for Said Defendant.

[fol. 144] In Court of Common Pleas of Knox County

[Title omitted]

Order Overruling Motions for New Trial: Filed December 6, 1935

This day this cause came on for hearing on the motion of the defendants for a new trial and on the amended motions of defendants for a new trial, said motions having been filed within three days subsequent to the judgment entry herein. Upon consideration thereof the court finds that each and all of said motions are not well taken and the same are overruled, to each of which actions and rulings of the court the defendants and each of them severally except.

Philip L. Wilkins, Judge.

[fol. 145] In Court of Appeals, Knox County, Ohio

No. 380

The Knox National Farm Loan Association and The Federal Land Bank of Louisville, Plaintiffs in Error,

vs.

Arthur C. Phillips, Defendant in Error

Petition in Error—Filed December 6, 1935

Plaintiffs in error say that at the September Term, 1935, towit, on November 18, 1935, of the Court of Common Pleas of Knox County, Ohio, defendant in error recovered a judgment by the consideration of said court against plaintiffs in error in an action then pending wherein defendant in error was plaintiff and plaintiffs in error were defendants,

said action being numbered 15070 on the dockets of said Court of Common Pleas, a transcript of the docket and journal entries whereof is filed herein.

There is error in said record and proceedings in this, towit:

1. Said court overruled each of the motions of plaintiffs in error for a new trial, to each of which rulings of the court plaintiffs in error at the time severally excepted.

2. Said court erred in finding that defendant in error was entitled to retirement and repayment for 53 shares of the capital stock of The Knox National Farm Loan Association, to which ruling of the court plaintiffs in error at the time excepted.

3. Said court erred in finding that The Knox National Farm Loan Association was indebted to defendant in error in the sum of $265.00, to which finding of the court plaintiffs in error at the time excepted.

4. Said court erred in rendering judgment in favor of [fol. 146], defendant in error and against plaintiff in error, The Knox National Farm Loan Association, to which judgment of the court plaintiffs in error at the time excepted.

5. Said court erred in ordering plaintiff in error, The Knox National Farm Loan Association to retire and cancel said 53 shares of the capital stock of The Knox National Farm Loan Association, to which order of the court plaintiffs in error at the time excepted.

6. Said court erred in finding that defendant in error was entitled to liquidation of the business and affairs of plaintiff in error, The Knox National Farm Loan Association, to which finding of the court plaintiffs in error at the time excepted.

7. Said court erred in sustaining the motion of defendant in error for the appointment of a receiver for plaintiff in error, The Knox National Farm Loan Association, to which ruling of the court plaintiffs in error at the time excepted.

8. Said court erred in appointing Harry W. Koons, receiver of plaintiff in error, The Knox National Farm Loan

Association, to which appointment and decree plaintiffs in error at the time excepted.

9. Said court erred in authorizing said receiver to take possession of the assets of plaintiff in error, The Knox National Farm Loan Association, and to manage and conduct the business of said plaintiff in error and otherwise to act as provided in said judgment entry, to which order and decree of the court plaintiffs in error at the time excepted.

10. The finding and judgment of the court are not sustained by sufficient evidence.

11. The finding and judgment of the court are not sustained by any evidence.

12. The finding and judgment of the court are cont-ary [fol. 147] to the weight of the evidence.

13. The finding and judgment of the court are contrary to law.

13. The judgment of the court should have been in favor of plaintiffs in error and against defendant in error.

15. Other errors and irregularities occurring at the trial and prejudicial to plaintiffs in error, to which plaintiffs in error at the time excepted.

Wherefore, plaintiffs in error pray that said judgment may be reversed and that plaintiffs in error may be restored to all things lost thereby.

Armond L. Koethen, Chas. L. Bermont, Vorys, Sater, Seymour & Pease, Attorneys for Plaintiffs in Error.

[fol. 148] In Court of Appeals, Knox County, Ohio

[Title omitted]

Waiver of Service of Summons in Error—Filed December 10, 1935

Now comes Arthur C. Phillips, by H. C. Devin, his attorney of record, and waives the issuance and service of sum-

mons in error and voluntarily enters his appearance herein this 7th day of December, 1935.

Arthur C. Phillips, by Henry C. Devin, His Attorney.

[fol. 149] IN COURT OF APPEALS OF OHIO

OPINION OF APPEALS OF OHIO

By LEMERT, P. J.:

This cause comes into this court upon a petition in error from the Court of Common Pleas of Knox County, Ohio. In the court below the following facts were either admitted or proven:

1. At the trial of the case it was stipulated and agreed by counsel that the allegations of the petition of the plaintiff below are true and the facts therein stated are thereby accepted as fully proven.

2. Upon presentation of the case it was stipulated that the defendants below agreed and admitted that the plaintiff in error, The Knox National Farm Loan Association was, on March 25, 1933, also at the time of the commencement of this action, and is now, insolvent.

3. It was also stipulated and agreed that said The Knox National Farm Loan Association has been, since March 25, 1933, being the date Phillips paid the full amount of his loan except the face value of his stock in said association, $265.00, and demanded its application at face value as final payment upon his loan, continuously engaged in the business of making new and further loans to new borrowers, for and on behalf of said, The Federal Land Bank of Louisville, for which new loans said association has made itself contingently liable and responsible to the payee, and that said new loans made since March 25, 1933, and up to the time of the commencement of this action aggregate in amounts more than $100,000.00.

4. In addition to the admissions by the defendants below of allegations of the petition concerning matters hereinafter mentioned, the said plaintiff below has also introduced in evidence the original receipt and agreement he

[fol. 150] received from said The Knox National Farm Loan Association, October 24, 1927, relative to the deposit of his 53 shares of capital stock in said association, "In connection with the loan of $5300.00 made through this association."

The receipt and agreement is undisputed, and contains provisions as follows:

(a) "This stock is being held by this association pursuant to the provisions of the Federal Farm Loan Act, as collateral security for the payment of the loan."

(b) "Notice to borrower.—This receipt represents your investment in stock on which dividends will be paid. It will be accepted at face value on final payment of loan."

5. At the beginning of the trial of the case, Phillips again made tender to the plaintiffs in error of the sum of $265.00, as in full payment of his ntortgage debt, on condition that the note and mortgage which said Phillips had assumed would be cancelled and released. This tender was refused by the defendants below.

6. In support of its cross petition, the plaintiff in error, The Federal Land Bank of Louisville, introduced:

(a) The original note and mortgage assumed by Phillips (by agreement photostatic copy to be used in lieu of original), and the testimony of a witness as to the amount claimed due thereon if Phillips' debt is not to be considered as paid March 25, 1933, when he paid $1837.50 and tendered the surrender of his said stock at its face value of $265.00.

(b) An agreement between said The Knox National Farm Loan Association and The Federal Land Bank of Louisville, which, I understand, restates the agreement of said association to indemnify said bank in respect to all loans made through said association, and to its stockholders.

[fol. 151] It is admitted and undisputed that the plaintiffs in error in the instant case operate under and are subject to the provisions of federal laws known as the Federal "Farm Loan Act", being a part of Title 12 of the United States Statutes. Section 721 of said title reads as follows:

"Whenever any national farm loan association shall desire to secure for any member a loan on first mortgage from the Federal Land Bank of its district it shall subscribe for capital stock of said land bank to the amount of 5 per centum of such loan, such subscription to be paid in cash upon the granting of the loan by said land bank. Such capital stock shall be held by said land bank as collateral security for the payment of said loan, but said association shall be paid any dividends accruing and payable on said capital stock while it is outstanding. Such stock may, in the discretion of the directors, and with the approval of the Federal Farm Loan Boards, be paid off at par and retired, and it shall be paid off and retired upon full payment of the mortgage loan. In such case the National Farm Loan Association shall pay off at par and retire the corresponding shares of its stock which were issued when said land bank stock was issued."

Section 733 of said act in part reads as follows:

"Said capital stock shall be paid off at par and retired upon full payment of said loan."

The language of the statutes just quoted is clear, plain and definite. It will be noted that there is no provision under this law whereby the plaintiffs in error can escape the definite requirement that when and if Phillips pays off his mortgage loan that The Knox National Farm Loan Association must pay off his stock at par and retire same. At the same time the Federal Land Bank is required to pay off at par and retire the corresponding shares of its stock issued in connection with this loan to The Knox National Farm Loan Association, and of course the proceeds should be applied on the borrower's mortgage debt. The law makes no other provision for any other course to be followed no matter whether The Knox National Farm Loan Association is solvent or insolvent.

It is to be noted that in addition to the plain provision [fol. 152] of the law as above quoted, we have the fact in the instant case that the plaintiff in error, The Knox National Farm Loan Association, executed and delivered to the defendant in error, Phillips, its written agreement, dated October 24, 1927, setting forth its definite promise in reference to the redemption of the stock in question at face value on final payment of the loan. The language of this agreement,

where it refers to the receipt given to Phillips for his 53 shares of capital stock, is as follows:

"It will be accepted at face value on final payment of loan."

Therefore we have in this case not only the absolute and definite requirements of the federal law, but also the definite agreement and promise of The Knox National Farm Loan Association, both to the effect that upon final payment of the loan the stock held by Phillips was to be paid off at par, and would be, in fact, accepted at face value in connection with the final payment aforesaid.

Counsel for plaintiffs in error stress the decision of the Supreme Court of North Dakota, in the case of Byrne vs. Federal Land Bank of St. Paul, 237 N. E., 797, claiming that this decision supports the claim that the plaintiffs in error are relieved from complying with the Federal Statute in respect to the redemption of Phillips' stock, on account of the insolvency of the said The Knox National Farm Loan Association.

Upon a careful reading of this opinion and especially its application to the language of Section 721 of the federal law above quoted, it appears that the Dakota court seems to concede that, taking the language of the section by itself, plaintiffs in the instant case would be required to pay off at par and retire the shares of stock in question, but the court in that case says:

"But this is only a portion of the act. When we con- [fol. 153] sider the act as a whole, it is apparent that Congress did not intend the farm loan association to pay off the stock at par when it had nothing with which to pay the stock."

We are of the opinion that the Byrne case should not apply to the instant case and should be definitely distinguished from it, for the reason that in the instant case the association gave to Phillips, under date of October 24, 1927, its written agreement and promise that the receipt given by it to said Phillips for capital stock of the par value of $265.00 would be accepted at face value on final payment of Phillips' loan. For this reason alone we are of the opinion that the Byrne case should not apply. It does not appear in the Byrne case that the plaintiff held any such

specific promise on the part of the association. Byrne had relied entirely upon the provisions of Section 721 of the Federal Farm Loan Act, hereinabove mentioned, and the insolvency of the defendant association was conceded and it was in actual liquidation.

It should be noted in the instant case that primarily this cause is one brought by a citizen and resident of the state of Ohio, to quiet title in respect to real estate located entirely within said state. Under such circumstances federal courts will follow the laws of the state in which real property is located in determining questions involving the title to that property.

In Re Barnett, 12 Fed., 2nd Ed., 73 76.

The record discloses in the instant case that Phillips is both a creditor and a stockholder. That being true, he should not be obliged to permit this confessed insolvent corporation to continue in a business that is apparently fraught with many hazards and has already resulted in considerable losses. If Phillips has no remedy under the law of the state of Ohio, it would be a monstrous and absurd proposition that this defendant being both a creditor and [fol. 154] stockholder, must sit back and take it, while this association repudiates its definite contract and continues to engage in a hazardous business that will likely result in further losses and may reach a place where Phillips as a stockholder would be subjected to an assessment upon his stock to pay further losses.

It is admitted that the association made a definite promise and agreement to pay Phillips this sum of money if and when he paid his loan. There is no contention but what Phillips has paid the loan in full and has complied with the order of the trial court in this respect. It therefore follows that he is entitled to recover judgment against the association for the amount promised and agreed to be paid.

It is admitted that the Association refused to accept the receipt from which the above is quoted at face value on final payment of the loan. This makes an entirely different situation than appears in any of the cases cited by counsel for plaintiffs in error. When this Association fails to keep this agreement, Phillips is entitled to a judgment for the amount promised him.

Counsel for plaintiffs in error cite a number of Ohio cases pertaining to the rights and claims of stockholders and members of Ohio Building & Loan Associations. Such

rights and claims in Ohio are all subject to specific statutes and are subject to exclusive remedies applicable under the Ohio law to Building & Loan Associations and the members and stockholders thereof. These authorities have no application to the case at bar.

We now come to the last proposition submitted by counsel for plaintiffs in error—that the trial court erred in appointing a receiver for The Knox National Farm Loan Association, because it was without authority of law and especially because the provisions of paragraphs 5 and 6 of Section II, 894 of the General Code do not grant such au- [fol. 155] thority. We note in paragraph 5 of the above section the following:

"In the cases provided in this title, and by special statutes when a corporation has been dissolved, or is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights."

This whole section of the General Code is included in Title 4, and this title is devoted to procedure in Common Pleas Court. Included therein is Section 11901, which provides for actions in said court to quiet title, and one of the features of this action brought in the court below by the plaintiff below is an action to quiet title. The insolvency of The Knox National Farm Loan Association being an admitted fact, even though courts have held that mere insolvency may not be a sufficient ground in itself in standing alone for the appointment of a receiver, it is apparent from the record in this case that this insolvency, coupled with the other admitted facts relative to this Association appearing of record, gave the trial court ample authority within its discretion for the appointment of a receiver.

Receivership is not the only and ultimate relief sought by plaintiff below, because he asks for the winding up of the business and affairs of the Association, and in view of the fact that he is both a creditor and stockholder, we are of the opinion that he has a right to demand that this corporation, which has already made a record for definite losses and is now insolvent, should be obliged to wind up its business, distribute its assets among its creditors as far as they may go in paying its debts, and save its stockholders from further losses and possibly double liability assessment if it is permitted to continue operations as in the past.

Just one closing word with reference to the jurisdiction of the court below in this case. We note in the Supreme Courts Reporter of January 15, 1936, the case of the United [fol. 156] States v. Bank of New York & Trust Company. The fifth syllabus of the case provides:

"Grant of jurisdiction to one court does not, of itself, imply that the jurisdiction is to be exclusive."

Chief Justice Hughes, on page 348 of the 56th Supreme Court Reporter, speaking for the court, says:

"The fact that the complainant in these suits is the United States does not justify a departure from the rule which would otherwise be applicable. The government invokes and confers jurisdiction upon the District Court to entertain all suits of a civil nature brought by the United States. The government insists that the United States is entitled to have its claim determined in its own courts. But the grant of jurisdiction to the District Court in suits brought by the United States does not purport to confer exclusive jurisdiction. It is a general rule that the grant of jurisdiction to one court does not, of itself, imply that the jurisdiction is to be exclusive. Upon the state courts of the union, rests the obligation to guard and enforce every right secured by the Constitution and laws of the United States whenever those rights are involved in any suit or proceedings before them. In this instance it cannot be doubted that the United States is free to invoke the jurisdiction of the state court for the determination of its claim, and the decision of the state court of any federal question which may be presented upon such an invocation, may be reviewed by this court, and thus all the questions which the government seeks to raise in these suits may be appropriately and finally decided."

So that, from a careful examination of the record before us in this case, we are of the opinion that the finding and judgment of the Court of Common Pleas should be and the same is hereby affirmed. Exceptions may be noted.

Montgomery, J., and Sherick, J., concur.

[fol. 157] IN COURT OF APPEALS, KNOX COUNTY, OHIO

Cause No. 380

THE KNOX NATIONAL FARM LOAN ASSOCIATION et al., Plaintiffs in Error,

vs.

ARTHUR C. PHILLIPS, Defendant in Error

JUDGMENT—Filed April 16, 1936

This cause came on for hearing upon the Petition in Error, the Transcript, and the original papers and pleadings from the Court of Common Pleas, of Knox County, and was argued by counsel; on consideration whereof, the Court find there is no error apparent on the record in said proceedings and judgment.

It is therefore considered by the Court that the judgment aforesaid be, and the same hereby is, affirmed; and that the defendant in error recover from the plaintiffs in error his costs herein expended, taxed at $—, for which judgment is hereby rendered in favor of said defendant in error and against said plaintiffs in error.

And the Court being of the opinion that there was reasonable ground for proceedings in error, allow no penalty.

It is further ordered that a special mandate be sent to the Court of Common Pleas of Knox County, for execution upon this judgment and this cause is remanded to said Common Pleas Court for further procedure.

To all of which judgment, finding, order and decree, plaintiffs in error except.

Approved: John M. Rankin.

Roger D. Branigin, of Counsel for Plaintiffs in Error.

Henry C. Devin, Counsel for Defendant in Error.

[fol. 158] IN COURT OF APPEALS, KNOX COUNTY, OHIO

[Title omitted]

NOTICE OF APPEAL ON QUESTIONS OF LAW—Filed May 5, 1936

To Arthur C. Phillips, Appellee:

You will take notice that appellants, within the time required by law, will appeal to the Supreme Court of Ohio on

questions of law and upon conditon that a motion to certify the record be allowed by said court from the judgment of the Court of Appeals of Knox County entered in this cause on the 16th day of April, 1936, affirming the judgment of the Court of Common Pleas of Knox County, Ohio, entered on November 18, 1935, wherein said Court of Common Pleas rendered judgment in favor of said Arthur C. Phillips, Appellee and against The Knox National Farm Loan Association, Appellant, for the sum of $265.00 with interest and costs and appointed a receiver to liquidate and wind up the affairs of said The Knox National Farm Loan Association, Appellant.

This notice is given you, and filed as, and is, the separate notice of The Knox National Farm Loan Association, Appellant and The Federal Land Bank of Louisville, Appellant.

Paul F. Fleming, Vorys, Sater, Seymour and Pease,
Attorneys for The Knox National Farm Loan Association and The Federal Land Bank of Louisville, Appellants.

Dated May 4, 1936.

[fol. 159] IN SUPREME COURT OF OHIO

No. 26013

ARTHUR C. PHILLIPS, Plaintiff and Appellee,

vs.

THE KNOX NATIONAL FARM LOAN ASSN., Defendant and Appellant

ORDER OVERRULING MOTION FOR ORDER DIRECTING COURT OF APPEALS OF KNOX COUNTY TO CERTIFY ITS RECORD—June 24, 1936

It is ordered by the Court that this motion be, and the same hereby is, overruled.

Clerk's certificate to foregoing paper omitted in printing.

[fol. 160] IN COURT OF APPEALS OF OHIO

MANDATE TO COURT OF COMMON PLEAS—Filed April 16, 1936

The State of Ohio, Knox County, Court of Appeals, February Term, A. D. 1936, to the Honorable Court of Common Pleas in and for Knox County, Ohio, Greeting:

At the term of the Court of Appeals, within and for said County, begun and held at Mt. Vernon, Ohio, on the 18th day of February, 1936, before Hon. Chas. C. Lemert, Presiding Judge, and Hon. Clyde C. Sherick and Hon. Chas. W. Montgomery, Judges, among other proceedings then and there had by and before said Court, as appears by its Journal, is the following, towit:

THE KNOX NATIONAL FARM LOAN ASS'N et al.

vs.

ARTHUR C. PHILLIPS

This cause came on for hearing upon the Petition in Error, the Transcript, and the original papers and pleadings from the Court of Common Pleas, of Knox County, and was argued by counsel; on consideration whereof, the Court find there is no error apparent on the record in said proceedings and judgment.

It is therefore considered by the Court that the judgment aforesaid be, and the same hereby is, affirmed; and that the defendant in error recover from the plaintiffs in error his costs herein expended, taxed at $—, for which judgment is hereby rendered in favor of said defendants in error and against said plaintiffs in error.

And the Court being of the opinion that there was reasonable ground for proceedings in error, allow no penalty.

It is further ordered that a special mandate be sent to the Court of Common Pleas of Knox County, for execution [fol. 161] upon this judgment and this cause is remanded to said Common Pleas Court for further procedure.

To all of which judgment, finding, order and decree, plaintiffs in error except.

We therefore command you, that without delay you cause said judgment to be carried into execution, according to the tenor thereof.

Witness my signature as Clerk of our said Court of Appeals, and the *sale* thereof affixed, at Mt. Vernon, Ohio, this 16th day of April, 1936.

Paul E. Bateman, Clerk, by —— ——, Deputy.
(Seal.)

[fol. 162] In Court of Appeals, Knox County, Ohio

[Title omitted]

Precipe for Transcript of Record—Filed July 14, 1936

To the Clerk:

You are hereby directed to prepare a transcript of and certify and transmit to the Clerk of the Supreme Court of the United States, the entire record in this case, including all pleadings, papers, opinions and testimony and all proceedings in this court, and a copy of the docket and journal entries filed in this court.

Vorys, Sater, Seymour & Pease, Attorneys for Defendants.

[fol. 163] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 164] Supreme Court of the United States

Order Allowing Certiorari—Filed November 9, 1936

The petition herein for a writ of certiorari to the Court of Appeals of the State of Ohio is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.